

CLERK'S COPY.

165 175244
S.C.
TRANSCRIPT OF RECORD.

Supreme Court of the United States

OCTOBER TERM, 1938

No. 554

H. C. RORICK, JOSEPH R. GRUNDY AND J. R. EASTON, APPELLANTS,

vs.

**BOARD OF COMMISSIONERS OF EVERGLADES
DRAINAGE DISTRICT, ETC., ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF FLORIDA**

FILED DECEMBER 31, 1938.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 554

H. C. RORICK, JOSEPH R. GRUNDY AND J. R. EASTON, APPELLANTS,

vs.

BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

INDEX.

	Original	Print
Record from D. C. U. S., Northern District of Florida.....	1	1
Caption	1	1
Bill of complaint	2	2
Exhibit "A"—Bond issued July 1, 1920.....	50	43
"B"—Bond issued July 1, 1921.....	52	46
"C"—Bond issued July 1, 1923.....	54	48
"D"—Bond issued July 1, 1925.....	55	50
"E"—Bond issued July 1, 1925.....	57	52
Amendment to bill of complaint.....	59	54
Supplemental bill of complaint.....	60	55
Amendments to prayers of bill of complaint and supplemental bill of complaint	74	68
Amendment to prayer of supplemental bill of complaint ..	78	73
Order calling Three-Judge Court	80	74
Order calling additional judges, and amendment to said order	81	75
Petition for interlocutory injunction	82	76
Order granting temporary restraining order and postponing hearing for interlocutory injunction.....	83	77
Acknowledgment of notice of hearing by Cary D. Landis, Attorney General	84	78

Record from D. C. U. S., Northern District of Florida—Continued.

Original Print

Order granting interlocutory injunction, dated September 6, 1932	85	79
Order denying motions to dismiss the bill of complaint and supplemental bill of complaint	90	83
Opinion, Strum, J., April 13, 1932	91	84
Opinion, Bryan, J., dissenting in part	122	109
Answer of trustees of Internal Improvement Fund	124	111
Answer of Doyle E. Carlton, as Governor of the State of Florida, et al.	185	166
Answer of Board of Commissioners of Everglades Drainage District et al.	186	167
Exhibit—Circular re bonds of Everglades Drainage District	222	196
Answer of Ross C. Sawyer, as Clerk of the Circuit Court of Monroe County, et al.	227	201
Motion of Board of Commissioners of Everglades Drainage District to vacate order of September 6, 1932.	227	202
Motion to reduce amount of bond	228	203
Affidavit of W. H. Watson	230	204
Order denying motion for reduction in amount of bond, etc.	231	205
Order granting motion of plaintiffs for substitution of parties, and leave to file second supplemental bill of complaint	232	205
Second supplemental bill of complaint	236	208
Motion of trustees of Internal Improvement Fund to dismiss	259	229
Motion of Board of Commissioners of Everglades Drainage District, et al., to dismiss	267	234
Motion for interlocutory injunction, re-instatement of injunction order of September 6, 1932, and for the convening of Three-Judge Court	274	240
Order convening Three-Judge Court to hear motion for interlocutory injunction, etc.	275	241
Order calling additional judges	276	242
Notice of hearing	277	242
Affidavit of H. C. Rorick	279	244
Walter A. Lippincott	279	244
F. C. Elliot	280	244
Opinion and judgment, dated August 2, 1938.	281	246
Petition for rehearing	285	248
Order denying petition for rehearing	306	266
Petition for appeal	306-a	266
Order allowing appeal	376	267
Appeal bond	377	
Assignment of errors	383	268
Citation on appeal, with acknowledgment of service (omitted in printing)	396	
Praeipue for transcript of record	400	279
Clerk's certificate	406	
Statement of points to be relied upon and designation of parts of record to be printed	407	282

[fol. 1]

**IN UNITED STATES DISTRICT COURT, NORTHERN
DISTRICT OF FLORIDA**

In Equity

Suit of

**H. C. RORICK, JOSEPH R. GRUNDY, and J. R. EASTON,
Plaintiffs,
against**

**BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT,
a Corporation Organized and Existing under the Laws
of the State of Florida; W. V. Knott, as Treasurer of the
State of Florida, as Custodian of the Funds of Everglades
Drainage District; Fred P. Cone, as Governor of the State
of Florida; J. M. Lee, as Comptroller of the State of Flor-
ida; W. V. Knott, as Treasurer of the State of Florida;
Cary D. Landis, as Attorney General of the State of Flor-
ida, and Nathan Mayo, as Commissioner of Agriculture
of the State of Florida, as and Constituting the Trustees
of the Internal Improvement Fund of the State of Flor-
ida; Ross C. Sawyer, as Clerk of the Circuit Court; J. Otto
Kirschheiner, as Tax Assessor, and Frank H. Ladd, as
Tax Collector of Monroe County; E. B. Leatherman, as
Clerk of the Circuit Court; J. N. Lummas, Jr., as Tax As-
sessor, and Hayes Wood, as Tax Collector of Dade
County; Ernest R. Bennett, as Clerk of the Circuit Court;
L. O. Hanson, as Tax Assessor, and W. O. Berryhill, as
Tax Collector of Broward County; George O. Butler, as
Clerk of the Circuit Court; James M. Owens, Jr., as Tax
Assessor, and Stetson O. Sproul, as Tax Collector of Palm
Beach County; J. R. Pomeroy, as Clerk of the Circuit
Court; A. C. Courson, as Tax Assessor, and L. C. Kick-
liter, as Tax Collector of Martin County; W. R. Lott, as
Clerk of the Circuit Court; E. R. Pierce, as Tax Assessor,
and Orris Nobles, as Tax Collector of St. Lucie County;
W. Z. Carson, as Clerk of the Circuit Court; P. G. Gearing,
as Tax Assessor, and Ruth Bass Hylton, as Tax Col-
lector of Highlands County; Doris S. Weeks, as Clerk of
the Circuit Court; I. E. Scott, as Tax Assessor, and J. P.**

Moore, as Tax Collector of Glades County; William T. Hull, as Clerk of the Circuit Court; Dennis Small, as Tax Assessor, and Frank A. Dougherty, as Tax Collector of [fol. 2] Hendry County; J. L. Barber, as Clerk of the Circuit Court; Robert La Martin, as Tax Assessor, and Bessie Alderman, as Tax Collector of Okeechobee County; and Edmond F. Scott, as Clerk of the Circuit Court; D. W. McLeod, as Tax Assessor, and C. H. Collier as Tax Collector of Collier County, the Said Several Counties Enumerated Being Counties in the State of Florida, Defendants.

BILL OF COMPLAINT—Filed May 19, 1931

To the Honorable United States District Judge for the Northern District of Florida:

H. C. Rorick, a citizen and resident of the State of Ohio, Walter H. Lippincott, a citizen and resident of the State of Pennsylvania, and J. R. Easton, a citizen and resident of the State of Ohio, bring this their bill of complaint against the Board of Commissioners of Everglades Drainage District, a corporation organized and existing under the laws of the State of Florida, Doyle E. Carlton, as Governor of the State of Florida, Ernest Amos, as Comptroller of the State of Florida, W. V. Knott, as Treasurer of the State of Florida, Cary D. Landis, as Attorney General of the State of Florida, Nathan Mayo as Commissioner of Agriculture of the State of Florida, Marcus A. Milam, W. H. Lair, Ralph A. Horton, C. E. Simmons, and D. Graham Copeland, as and constituting the Board of Commissioners of Everglades Drainage District, as defendants; and thereupon your orators complain and say.

1. That your orators are citizens of the following states: H. C. Rorick is a citizen and resident of the State of Ohio; Walter H. Lippincott is a citizen and resident of the State of Pennsylvania; J. R. Easton is a citizen and resident of the [fol. 3] State of Ohio.

That each of the defendants is a citizen and resident of the State of Florida, the Board of Commissioners of Everglades Drainage District being a corporation organized and existing under the laws of the State of Florida, and a citizen and resident of that State, and each and every member of the Board of Commissioners of Everglades Drainage

District being a citizen and resident of the State of Florida.

That the jurisdiction of this Court is invoked by reason of the fact that this is a civil suit in equity between citizens of different states, in that each of the complainants is a citizen of a state other than the State of Florida, and that each of the defendants is a citizen of the State of Florida; that the matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars (\$3000).

2. That the Legislature of the State of Florida by Chapter 6456 of the Acts of 1913 established a Drainage District to be known and designated as Everglades Drainage District, the territorial boundaries of which were defined by the said Act.

By the said Act the Governor, the Comptroller, the State Treasurer, the Attorney General and the Commissioner of Agriculture, of the State of Florida, and their successors in office, were constituted the governing board of said District and designated the Board of Commissioners of Everglades Drainage District, with all the powers of a body corporate, including the power to sue and be sued by said name in any court of law or equity, to make contracts, to borrow money and to issue bonds therefor to enable the Board of Commissioners to carry out the provisions of the Act.

By Chapter 13633 of the Acts of 1929 the Board of Commissioners of said District shall be composed of the Governor, the Attorney General, the Comptroller, the Commissioner of Agriculture and the State Treasurer, of the State [fol. 4] of Florida, and their successors in office; and five persons to be appointed by the governor of the State. The Governor appointed said five persons, and the Board of Commissioners of said District is now composed of the persons whose names are hereinbefore set forth in paragraph 1 of this complaint.

3. The Everglades Drainage District comprises more than 4,000,000 acres of public and private lands in the southern part of Florida which were formerly owned by the United States and were granted by Congress to the State of Florida by the Act of September 28th, 1850, as part of the swamp and overflowed lands included within the grant of that statute. As indicated in the statute the grant was made to the State of Florida to enable it to construct the necessary levees and drains to reclaim such swamp and overflowed lands, and the statute provided that the lands and

their proceeds were to be applied exclusively, as far as necessary, to the purpose of reclaiming said lands. The obligation of the state to apply the lands for the purpose stated in the Act of Congress granting the lands to the State rests in the sovereign relation of the United States and of the State of Florida.

The obligation of the State of Florida to drain the granted lands was recognized in the enactment of Chapter 610 of the Laws of the State of Florida, approved January 6th, 1855, which provides for the management and disposition of the swamp and overflowed lands belonging to the State of Florida under the Act of Congress of September 28th, 1850; the lands were vested, by said statute of the State of Florida, in the Governor and four other state officials, and their successors in office, as trustees of the Internal Improvement Fund of the State of Florida, in trust for the purposes defined in the statute; the trustees had stated powers and duties with reference to the swamp and overflowed lands, and they were required by the state statute to make such arrangements for the drainage of the swamp and overflowed [fol. 5] lands, as in their judgment might be most advantageous to the Internal Improvement Fund and the settlement and cultivation of the land.

The Legislature of the State of Florida by Chapter 5377 of the Acts of 1905, made provision for the drainage operations to be carried on by the Trustees of the Internal Improvement Fund as a Board of Drainage Commissioners. This Act was amended by Chapter 5709 of the Acts of 1907 by which a drainage district was created in the Everglades territory covering more lands than the Everglades Drainage District now contains. Chapter 6456 of the Acts of 1913 established the Everglades Drainage District, and, as will be shown more fully hereafter, levied a graduated acreage or drainage tax for the drainage operations to be prosecuted by a Board of Commissioners of Everglades Drainage District, which Board of Commissioners was composed of the same state officers who are the trustees of the Internal Improvement Fund.

In furtherance of the duty and purpose to comply with the granting Act of Congress requiring the lands to be drained, the state officers and their successors in office, who are by Chapter 610 of the Laws of 1855, made trustees of the Internal Improvement Fund with the statutory powers and duties with reference to draining the swamp and over-

flowed lands, are by Chapter 6456 of the Acts of 1913 made the Board of Commissioners of Everglades Drainage District, with authority to establish and construct a system of canals, levees, dikes, draws, locks and reservoirs to reclaim the lands within the Everglades Drainage District.

The need of flood control and its benefits to public safety and health and to the lands in the entire district are obvious upon a consideration of the history and conditions of the Everglades section and the adjacent territory. This has been recognized by the federal grant of swamp and overflowed lands to the state, in providing that such lands or their proceeds should be used for constructing levees and drains, which are appropriate to flood control as well as to [fol. 6] surface drainage and other improvements.

The Everglades Drainage District is a statutory subdivision of the state for special governmental purposes. The trustees of the Internal Improvement Fund now own approximately 800,000 acres of land in the Everglades Drainage District which they owned prior to the establishment of the district, and as will hereafter be more fully shown, the said trustees have since bid in a substantial part of the lands of the district which have been sold for default in the payment of drainage taxes levied by the statute under which the Everglades Drainage District was established, and the bonds of the District were issued.

4. Under the statute establishing the Everglades Drainage District it was contemplated that the funds necessary to construct and complete the canals and related improvements in the District could be secured through drainage or acreage taxes to be paid by the owners of the land in the District. As the expenditures required to make certain of the improvements would be large, the expenditure for St. Lucie canal alone having been approximately \$6,000,000, such improvements, if they were to be made promptly, must be constructed out of borrowed money which money in turn be repaid out of taxes.

Chapter 6456 of the Acts of 1913, Laws of Florida, under which said District was established, as amended by Chapter 6957 of the Acts of 1915, Laws of Florida, authorized the issue and sale by the said Board of Commissioners of its bonds in the principal sum of \$3,500,000, the said bonds to be in denominations of \$1000.00, or such smaller denominations, not less than \$100.00, as the said Board might de-

termine, and to bear interest at a rate to be fixed by said Board, not exceeding six percent per annum, payable semi-annually, and represented by interest coupons in such form as should be prescribed by the said Board of Commissioners.

The said statute further provided that the said bonds [fol. 7] should be in such form as should be prescribed by the Board of Commissioners, should recite that they were issued under the authority of the said statute, which should be referred to in said bonds by number of chapter and date of approval, and which should pledge the faith and credit of the said Board of Commissioners for the prompt payment of the principal and interest of the said bonds. It was further provided by the said legislation that the said bonds should be numbered consecutively in the order of their issuance, should be signed by each member of the said Board and attested by the Secretary thereof under the seal of the said Board, and should have interest coupons annexed, which should be consecutively numbered, specify the number of the bond to which they were attached, and should be attested by the lithographed or engraved fac simile signature of the Secretary of the said Board and the Chairman or other member of the said Board as the said Board should designate. In and by said statute it was provided that when the said Board of Commissioners had caused any bonds to be prepared, signed and sold in the manner prescribed in the statute, the bonds should be submitted to the Attorney General of the State of Florida, whereupon it should be the duty of the said Attorney General to examine carefully the said bonds in connection with the facts and the Constitution and the provisions of the statute, and if as a result of such examination the said Attorney General should find that the said bonds were issued in conformity with the Constitution and statutes and that they were binding and valid obligations upon the said Board of Commissioners of the Everglades Drainage District, he should officially so certify on each of said bonds by a certificate to be signed by him as follows:

“The within bond examined and certified to be regularly issued and a valid obligation of the Board of Commissioners of Everglades Drainage District.”

The said statute further required that the certificate of the [fol. 8] Attorney General so signed by him should be taken

and received in evidence as proof of the validity of the bonds, with the coupons thereto attached, and that no defense should be offered against any bond so certified in any action or proceeding, except forgery. It was further provided that after the said bonds had been examined and approved by the Attorney General as provided in the said statutes, they should be delivered to the State Treasurer, who should give his receipt to the said Board of Commissioners therefor, and he was required to enter in a book to be kept by him the number of each bond, the rate of interest, the time it became due, the date of sale and the person to whom sold and his postoffice address, it being further required that the said State Treasurer should hold such bonds and be the legal custodian thereof and deliver the same to the purchaser upon resolution of the said Board duly recorded in the minutes of the said Board. In and by the said statute of 1913, as amended, it was further provided that the said statute should, without reference to any other Act of the Legislature of the State of Florida, be full authority for the issuance and sale of the bonds by said statute authorized, which bonds it was provided by said statute should have all the qualities of negotiable paper under the law merchant and should not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof and should be incontestable in the hands of bona fide purchasers or holders thereof for value, and that no proceedings in respect to the issuance of any of said bonds should be necessary, except such as were required by the said statute.

In and by the said statute of 1913 as originally enacted and as amended it was further provided that the said statute should constitute an irrepealable contract between the said Board of Commissioners of *Commissioners of Everglades Drainage District* and the holders of any bonds and coupons thereof issued pursuant to the provisions of the said statute, and that any holder of any of such bonds or coupons might, [fol. 9] either at law or in equity, by suit, action or mandamus, enforce and compel the performance of the duties required by the said statute of any of the officers or persons mentioned in the statute in relation to said bonds or of the collection, enforcement and application of the taxes for the payment thereof.

The said Chapter 6456 of the Laws of Florida was further amended by Chapter 7305 of the Acts of 1917, but

not in any respect modifying or repealing the above mentioned provisions of the said Act of 1913.

5. By Chapter 7862 of the Laws of Florida, Acts of 1919, the said Chapter 6456 of the Laws of Florida was further amended to authorize the said Board to issue, sell and have outstanding at any time not in excess of \$6,000,000 of bonds, that is to say \$2,500,000 over and above the \$3,500,000 as provided for and authorized under the provisions of Chapter 6957 of the Acts of 1915, which, as before alleged, amended the said Chapter 6456 of the Acts of 1913, and so that the amount of bonds authorized to be issued by the said Board in any fiscal year should not exceed the sum of \$1,500,000.

6. In 1921 the Legislature of the State of Florida, by Chapter 8413, Laws of Florida, further amended the said Chapter 6456 of the Laws of Florida so as to authorize the said Board of Commissioners of Everglades Drainage District to issue and sell bonds, provided that the amount of bonds issued and outstanding should not at any time exceed \$7,750,000, that is to say \$1,750,000 over and above the \$6,000,000 provided for and authorized under the provisions of Chapter 7862, Laws of Florida, Acts of 1919, and provided that the amount of bonds authorized and issued by said Board in any fiscal year should not exceed \$1,500,000.

7. The various legislation as to said Everglades Drainage District and the issuance of bonds by it was codified and brought forward into the Revised General Statutes of Florida [fol. 10] as Sections 1160 to 1188, inclusive, of said Revised General Statutes of Florida. In 1923 the Legislature of the State of Florida, by Chapter 9119, Laws of Florida, amended Sections 1164 and 1178 of said Revised General Statutes, as amended by the aforementioned Chapter 8413 of the Acts of 1921, Laws of Florida, so as, so far as concerned the bonds of said District, to continue the authorization of said Board of Commissioners to issue and sell bonds at such rate of interest as it might deem proper not exceeding five and one-half percent per annum, for the purposes of said Act, which were the same purposes as defined in the original Chapter 6456 of the Acts of 1913, it being provided by said Act of 1923 that the amount of bonds issued and outstanding should not at any time

exceed \$11,250,000, that is to say \$3,500,000 over and above the \$7,750,000 as provided for under the provisions of Chapter 8413, Acts of 1921, Laws of Florida, and so that the amount of bonds authorized and issued by said Board in any fiscal year should not exceed the sum of \$1,500,000.

7-a. In 1925 the Legislature of the State of Florida, by Chapter 10026, Laws of Florida, amended Section 1160 of the Revised General Statutes and Section 1164 of said Revised General Statutes, as amended by Chapter 8413, Laws of Florida, as amended by Chapter 9119, Laws of Florida, and amended Section 1178 of said Revised General Statutes, as amended by Chapter 8413, Laws of Florida, as amended by Chapter 9119, Laws of Florida; and also by Chapter 10027 amended Section 1179 of said Revised General Statutes, the same being section 20 of Chapter 645, Laws of Florida, Acts of 1913, as amended by Section 6 of Chapter 7305, Laws of Florida, Acts of 1917. By said Chapter 10026 the authority was conferred on the said Board to borrow money on permanent loans at such rates of interest, not exceeding six percent per annum, as it should deem proper and to issue negotiable coupon bonds of said District, it being provided that the amount of bonds issued and outstanding should not at any time exceed [fol. 11] \$14,250,000, that is to say \$3,000,000 over and above the \$11,250,000 provided for and authorized under the provisions of Chapter 9119, Acts of 1923, Laws of Florida, it being further provided that the amount of bonds authorized and issued by the said Board should not exceed in any fiscal year the sum of \$1,500,000. Said Chapter 10027 provided that the said bonds should be in denominations of \$1000.00, or such smaller denominations as the said Board should determine, but not less than \$100.00, and should bear interest at a rate to be fixed by the said Board at not exceeding six percent per annum, it being further provided by said Chapter 10027 that in the event the said Board should for any reason deem it advisable for the best interest of said District to refund any of the bonds issued under the authority of the provisions of the Article of the Revised General Statutes of which said Section 1179 was a part, the said Board might borrow money and issue in its corporate name notes and negotiable coupon bonds of said Everglades Drainage District in an amount sufficient to meet such bonds and coupon indebtedness. The said

refunding bonds were to be issued in such denominations, bear such interest rate and mature at such time or times, not exceeding thirty years from the date of issue, as said Board might determine, and that in all other respects the said bonds should be in the manner of issuance and sale subject to the provisions of the Article of the Revised General Statutes of which said Section 1179 was a part. It was further provided by the said Section 1179, as amended by the said Chapter 10027, that all refunding bonds issued under authority thereof should constitute an obligation of equal dignity with any and all other bonds that had theretofore been or might thereafter be issued against and by said District.

7-b. Pursuant to the authorization given by the hereinabove mentioned statutes of the State of Florida, and in each case pursuant to the statutes then in force, and in strict conformity therewith, the said Board of Everglades Drainage Commissioners, after due and appropriate resolution [fol. 12] issued and sold to Spitzer, Rorick & Company, pursuant to contracts from time to time made with said Spitzer, Rorick & Company, bonds of said Board and District, all of the denomination of \$1000.00, each dated, in amounts and bearing the rate of interest below stated, to-wit:

Bonds dated July 1, 1920, Amount \$1,500,000, Int. 6% ;
 Bonds dated January 1, 1921, Amount \$1,000,000, Int. 6% ;
 Bonds dated July 1, 1921, Amount \$500,000, Int. 6% ;
 Bonds dated January 1, 1922, Amount \$1,250,000, Int. 6% ;
 Bonds dated July 1, 1923, Amount \$1,500,000, Int. 5½% ;
 Bonds dated January 1, 1923, Amount \$1,300,000, Int.

5% ;

Bonds dated July 1, 1925, Amount \$2,500,000, Series A Refunding Int. 5% ;

Bonds dated July 1, 1925, Amount \$2,500,000, Series B Refunding Int. 5% ;

Bonds dated July 1, 1925, Amount \$2,500,000, Series C Refunding Int. 5% ,

the said refunding bonds being sold and the proceeds used to refund bonds previously issued by the said Board pursuant to the legislation before mentioned, as from time to time amended. All of said bonds were in the form, denominations, bearing the rate of interest and were signed and were certified by the Attorney General of the State of Florida as

authorized by the before mentioned statutes and in strict conformity therewith. The said Spitzer, Rorick & Company paid cash therefor in each instance pursuant to contracts previously made with the said Board, and the said bonds were delivered to them, and they thereupon became the bona fide purchasers and holders thereof for value. Of the various bonds issued and sold by the said Board under the authority of the hereinabove mentioned legislation, there are now outstanding as obligations of the said District amounts of said bonds as follows, which bonds are outstanding in the hands of bona fide holders thereof for value, to-wit:

Issue of July 1, 1920	\$1,003,000
Issue of January 1, 1921	661,000
[fol. 13] Issue of July 1, 1921	500,000
Issue of July 1, 1922	1,250,000
Issue of July 1, 1923	1,363,000
Issue of January 1, 1925	1,300,000
Issue of July 1, 1925	2,500,000
Issue of July 1, 1925	500,000
Issue of July 1, 1925	837,000

The complainants are the holders and owners of many thousand dollars of the said outstanding bonds, of which bonds so outstanding \$100,000. of the bonds dated July 1, 1923 became due January 1, 1931, and were not paid, of which past due bonds the complainants are the holders and owners of bonds of the par value of, to-wit: \$51,000.00. Also on the 1st day of January, 1931 interest became due on all of said outstanding bonds, as evidenced by interest coupons attached to said bonds, and said interest was not paid by the said defendant. Of the said past due interest the complainants hold coupons due January 1, 1931 from issues of bonds as below stated, the date of the bond being given below and the amount in dollars of the past due interest coupons held by these complainants, to-wit:

Bonds dated July 1, 1920, Interest coupons held	\$15,000.00
Bonds dated January 1, 1921, Interest coupons held	\$11,850.00
Bonds dated July 1, 1921, Interest coupons held	\$5,870.00
Bonds dated January 1, 1922, Interest coupons held	\$19,920.00
Bonds dated July 1, 1923, Interest coupons held	\$10,807.50

Bonds dated January 1, 1925, Interest coupons held	\$12,050.00
Bonds dated July 1, 1925, Series A refunding, Interest coupons held	\$21,350.00
Bonds dated July 1, 1925, Series B refunding, Interest coupons held	\$2,775.00
Bonds dated July 1, 1925, Series C Refunding, Interest coupons held	\$6,800.00

In addition to the foregoing bonds and interest which became due on January 1, 1931, the complainants are also holders of many thousand of dollars of said outstanding bonds which will become due July 1, 1931 and of the interest [fol. 14] coupons thereon which will become due July 1, 1931, to pay which the said defendants have made no provision.

There is attached hereto, marked Exhibits "A", "B", "C", "D" and "E", a true copy of one of the said bonds issued and dated July 1, 1920, the bonds issued and dated January 1, 1921 differing therefrom only in the date thereof, a true copy of one of the said bonds issued and dated July 1, 1921, which is the same as the bonds issued and dated January 1, 1922 except as to date, a true copy of one of the said bonds issued and dated July 1, 1923, a true copy of one of the said bonds issued and dated January 1, 1925, and a true copy of one of said refunding bonds issued and dated July 1, 1925, the others differing therefrom only in the Series designation.

No bonds of said defendant Board and said District were issued and sold under the authorization of said Chapter 6456, Laws of Florida, prior to the amendment thereof, but after the amendment thereof and prior to the issuance of bonds dated July 1, 1920 above mentioned and specifically at or after the amendment thereof by the above mentioned Act of 1915, negotiations were had by the defendant Board with the firm of Spitzer, Rorick & Company, who entered into a contract with said Board for the purchase of the \$3,500,000 of bonds authorized by the said Chapter 6456, Laws of Florida, Acts of 1913, as amended by Chapter 6957, Laws of Florida, Acts of 1915, and thereafter, pursuant to said contract, the said \$3,500,000 of bonds were issued and sold to the said Spitzer, Rorick & Company, who paid cash therefor, the said bonds being of the denomination of \$1000.00 each and bearing interest at the rate of six per cent per annum, which bonds were issued pursuant to appro-

appropriate resolutions of the said Board and in strict conformity with the said legislation, containing the recitals and being executed and certified in the manner required by said legislation, and by the purchase thereof said Spitzer, Rorick & Company became holders thereof in due course for value. After the amendment of the said Chapter 6456, Laws of [fol. 15] Florida, by the above mentioned Act of 1915, and the further amendment thereof by Chapter 7862 of the Laws of Florida, Acts of 1919, whereby the defendant Board was authorized to issue and sell an additional \$2,500,000 of bonds, the firm of Spitzer, Rorick & Company, industrial bankers, bought for cash, pursuant to contract or contracts between them and the said Board, the said entire additional \$2,500,000 of bonds, \$1,500,000 of said issue being dated July 1, 1920 and \$1,000,000 of said issue being dated January 1, 1921, which bonds also were in denominations of \$1000.00 each, bore interest at the rate of six per cent per annum, and were issued and sold in strict conformity to the resolutions of the defendant Board and to the legislation authorizing their issuance and sale; that the said Spitzer, Rorick & Company paid cash therefor and became the bona fide purchasers and holders thereof in due course for cash. All of said bonds and all of the bonds mentioned in this bill of complaint as having been issued and sold to said Spitzer, Rorick & Company were in the form required by the various statutes under which they were issued, and were executed by the various officials and certified by the Attorney General as required by said statutes; that none of the said issue of \$3,500,000 of bonds are now outstanding, but they were paid off and discharged from the proceeds of the sale of the above mentioned refunding bonds of July 1, 1925, and other moneys of the defendant Board, so that there are now outstanding of the various issues only the above mentioned aggregate sum of \$9,919,000 of bonds, all of which are binding and valid obligations of the defendant Board, constituting irrevocable contracts in accordance with the provisions of the various statutes under which they were issued and sold.

8. In each and every bond issued by said Board of Commissioners and sold to Spitzer, Rorick & Company, and in each and every bond now held by complainants, the said Board of Commissioners for value received acknowledges itself indebted and promises to pay to bearer the sum of

[fol. 16] \$1,000 on the date named in the bond and to pay interest thereon at the rate and on the date named in the coupon annexed to the bond.

In each and every bond, except refunding bonds, there is contained a recital that the bond is issued for the purpose of completing and constructing canals, drains, dikes, dams, locks, reservoirs and other works necessary for the drainage of said Everglades Drainage District, under and pursuant to and in full compliance with the Constitution of the State of Florida, and the statutes of said State of Florida, including among others the statute, referred to in the bond by chapter and date of approval, under which the bond was authorized to be issued and was issued, and in each and every bond it is further recited that the bond is issued in pursuance of resolutions and proceedings of the Board of Commissioners of Everglades Drainage District had and adopted.

In each and every bond it is certified, recited and declared that all acts, conditions and things required to exist, happen and be performed, precedent to and in the issuance of the bond, have existed, have happened and have been performed in due form and manner as required by law, and that the amount of the bond, together with all the other indebtedness of said Board of Commissioners and of said Everglades Drainage District does not exceed any limit prescribed by the Constitution and statutes of said state.

9. There are now outstanding, in the hands of bona fide holders for value, \$9,919,000 principal amount of the bonds of the Board of Commissioners of Everglades Drainage District, issued and sold as hereinbefore set forth, which constitutes the entire bonded indebtedness of said district. Extensive improvements in the Everglades Drainage District have been made out of the proceeds of the sale of said bonds, which improvements include the construction of canals necessary for the drainage of the land and for flood control. Much of the land which now constitutes the Everglades Drainage District, and which is now available for [fol. 17] cultivation, was in 1913 and prior to the expenditure of the proceeds of the bonds which were issued as hereinbefore set forth, submerged under water. Among the improvements made in the Everglades Drainage District since the issue of the said bonds has been the construction of ex-

tensive roads which have made travel and transportation through the district both possible and convenient.

Complainants are informed and believe, and therefore allege that the assessed valuation of all the lands of the Everglades Drainage District in 1915 was approximately \$32,000,000 and in 1928 approximately \$122,000,000. On January 25th, 1924, counsel for the trustees of the Internal Improvement Fund and of the Board of Commissioners of Everglades Drainage District in a letter to Spitzer, Rorick & Company stated: "The Everglades Drainage District contains 4,370,096 acres of land. I am advised by the chief drainage engineer that the acreage price or value of the lands in the district would be about \$25 per acre. There is plenty of land in the district that could not be bought on the market for \$300 per acre. The price ranges from this amount down to a very nominal price. A reasonable estimate of the value of the land in the district would be from \$70,000,000 to \$80,000,000.

10. The project to reclaim the land contained in Everglades Drainage District involved in 1913 and for some time thereafter, difficulties of an engineering, financial and practical nature which at first seemed to make the entire project impossible of fulfillment. These inherent difficulties in 1913 and for some time thereafter made the sale of bonds by the Board of Commissioners seem to be hopeless. Several years were required to sell the first bonds which the Board of Commissioners were authorized to issue. Among the considerations and conditions which eventually made such bonds salable when understood, were the following: The ownership in the district of a substantial part of the land of the district by the trustees of the Internal Improvement Fund, an agency of the State of Florida, which holds the lands of said state in trust, and which is required by statute to pay taxes on such lands in the district held [fol. 18] by it; the levy by statute of definite drainage or acreage taxes on the lands in the district sufficient, if collected, to pay the bond requirements in full, and the appropriation by the statute of such taxes and all other funds of the district to the payment of the bonds principal and interest; the obligation, after the year 1917, of the trustees of the Internal Improvement Fund, under the statute, to bid in and pay for the lands offered at public sale by the

- tax collector for non-payment of drainage taxes, in each and every case where no other bidder appeared at the sale who had actually bid in the lands for the amount of the defaulted taxes, interest and penalties; the lien of the drainage taxes on the lands, which lien was of equal dignity with the lien for state and county taxes.

The complainants are informed and believe, and therefore allege, that the attorney general of the state of Florida in the written opinion which he gave in every case to induce the sale of the bonds of the district stated that he unqualifiedly approved of the collectibility of said bonds and of the sufficiency of the taxing power back of them, and that he made such statements in reliance upon the considerations enumerated in this paragraph of the complaint and similar considerations contained in the statutes under which the bonds were issued.

11. As the bonds of the Board of Commissioners were to be paid out of drainage or acreage taxes levied on the lands within the district it is of paramount importance to the collectibility of the bonds that adequate provision should be made for the levy, collection and application of such taxes to the payment of the bonds. Accordingly in each and every statute which authorize bonds to be issued and sold to the public by the Board of Commissioners of Everglades Drainage District, drainage or acreage taxes were levied by the statute sufficient to meet requirements of the bonds principal and interest. To insure against diversion of the taxes thus levied by the statute through the issue and sale by the Board of Commissioners of additional bonds [fol. 19] provision was made in each and every statute under which bonds were issued that nothing contained in the statute should be deemed a limitation of the right of the legislature to authorize additional bonds of the Board of Commissioners, payable from drainage taxes within said district, provided that any such additional authority should be accompanied by the levy and imposition of additional taxes or assessments sufficient to meet the payment of the bonds authorized and interest thereon as the same should become due; such payments are to be provided for by a sinking fund as required in the statute, and such additional bonds should constitute an obligation of equal dignity with the bonds authorized by the particular statute and equally with the bonds authorized by such statute. Bonds there-

after authorized may be entitled to payment from all drainage taxes then or thereafter imposed upon the lands within said district without preference to any bonds or series of bonds over any other bonds or series of bonds.

In and by section 5 chapter 6456 of the Acts of 1913, as amended by the Acts of 1915, 1919, 1921, 1923 and 1925, the legislature of the State of Florida has enacted that, for the purpose of constructing, completing and maintaining the works of drainage and reclamation authorized by the statute for the benefit and protection of the lands in Everglades Drainage District, annual assessments of taxes shall be and are by the statute levied and imposed upon all the lands within the Everglades Drainage District, at the rates provided in the statute. For the purpose of levying the taxes the district is divided into different zones. On the lands in respective zones there is levied by the statute a drainage tax, which tax for the year 1931, payable without penalty between November 1st, 1931 and April 1st, 1932, as follows: in zone 1, \$1.50 per acre except upon platted town lots of one acre or less on which the tax is \$1.50 on such town lot; [fol. 20] in zone 2, \$1.10 per acre except on platted town lots of one acre or less on which the tax is \$1.10 on such lot; in zone 3, 90¢ per acre except on platted town lots of one acre or less on which the tax is 90¢ for such lot; in zones 4, 4a, 5 and 5a, 80¢ per acre except on platted town lots of one acre or less on which the tax is 80¢ for such lot; in zone 5b, 20¢ per acre except on platted town lots of one acre or less and 20¢ on such lot. Upon all other lands embraced in said drainage district, except such as are expressly excluded from taxation by the statute, a drainage tax is levied by the statute of 10¢ per acre annually.

Similar drainage taxes but at different rates were levied by the statute in each of the preceding years in which bonds of the drainage district were outstanding.

The amount of the drainage tax levied by the statute which was to be collected by the tax collectors without penalty between November 1st, 1930 and April 1st, 1931 was \$— and the total tax levied by the statute which was to be collected without penalty between November 1st, 1931 and April 1st, 1932 was \$—.

The total amount required to pay the full interest on the bonds outstanding in the year beginning January 1st, 1931

was \$—, and the total amount required to pay the full principal on the bonds maturing in the year 1931 was \$—.

12. The legislature not only levied by the statute sufficient drainage taxes to meet the requirements principal and interest of all bonds of said Board of Commissioners authorized to be issued and issued but in order to increase the security of the bonds and thereby to promote the likelihood of their purchase by the public the legislature appropriated the proceeds of the drainage taxes levied by the statute and the other moneys of the district to the payment of the principal and interest of the bonds. In and by Section 24, chapter 6456 of the Acts of 1913, the legislature enacted that it [fol. 21] shall be the duty of the State Treasurer, or his successor in office, as custodian of the funds belonging to the said Board of Commissioners and to said drainage district, out of the proceeds of the drainage taxes levied and imposed by the statute, and out of any other moneys in his possession belonging to the said Board of Commissioners or to the said drainage district, which moneys so far as necessary are set apart and appropriated by the statute for the purpose, to apply said moneys and to pay the interest upon said bonds as the same shall fall due and at the maturity of the said bonds out of the said moneys to pay the principal thereof; the legislature further enacted by the statute that there shall be and there is hereby created a sinking fund for the payment of the principal of the said bonds, and that the said Board of Commissioners shall set apart and pay into such sinking fund annually out of the taxes levied and imposed by the statute; and the other revenues and funds of the district, at least two per cent of the amount of the bonds outstanding, and that such sinking fund for the payment of the principal of said bonds shall not be appropriated to any other purpose than specified by the statute.

In a resolution of the Board of Commissioners under which each issue of its bonds was authorized to be issued and to be sold there was included, as part thereof the following provision for the creating of such a sinking fund:

“Be it resolved, that there shall be and there is hereby created a sinking fund for the payment of the principal of the said bonds, and the board does hereby set apart and direct to be paid into such sinking fund annually out of the

taxes levied and imposed in said district and the other revenues and funds of this district not less than two per cent (2%) of the amount of bonds outstanding and in and for each of the years during which said bonds shall mature there shall in addition be paid into the sinking fund, in time to reasonably pay the principal of the said bonds after they mature the amount of bonds maturing during such year. The said sinking fund for the payment of the principal of the said bonds shall not be appropriated to any other purpose than that herein specified."

In each and every bond issued and sold by the Board of [fol. 22] Commissioners it is certified, recited and declared that the full faith, credit and resources of said Board of Commissioners of said district are thereby pledged for the punctual payment of the principal and interest of the bond.

The legislature in and by section 23 of chapter 6456 of the Acts of 1913 enacted that the provisions of the statute under which the bonds of the Board of Commissioners were authorized to be issued and were issued shall constitute an irrepealable contract between the said Board of Commissioners of said Everglades Drainage District and the holders of the bonds and coupons issued pursuant to the provisions of the statute.

13. One of the vital provisions of the statute, under which the bonds of the Board of Commissioners were issued, securing the bonds and insuring their collectibility is that the trustees of the Internal Improvement Fund will bid in all lands of the district which are offered by the tax collector at public sale for non-payment of drainage taxes and which are not purchased by any other purchaser for the amount of the unpaid taxes, interest and penalties. Lands included within the Everglades Drainage District had all been the property of the State of Florida, on which state rested the obligation, under the granting statute of Congress, as hereinbefore set forth, to reclaim such lands. The trustees of the Internal Improvement Fund are and were the agency of the State of Florida for this purpose and are and were the owners of a substantial part of the lands of the district which they owned even before the district was established. The trustees themselves engaged in the reclamation of these lands prior to the establishment of the district in 1913. When the district was established in 1913, and up to the

year 1929, the same five public officials, the governor of the state, the comptroller of the state, the state treasurer, the attorney general and the commissioner of agriculture were both the trustees of the Internal Improvement Fund and the Board of Commissioners of Everglades Drainage District, [fol. 23] and had held these offices at the time that all the bonds of the Board of Commissioners now outstanding were issued and sold to the public.

As a condition to the purchase of additional bonds of the Board of Commissioners, Spitzer, Rorick & Company in 1917 required that the statute under which additional bonds should be issued must provide that when lands in the district are offered at public sale by the tax collector for non-payment of drainage taxes, if no purchaser appears at the sale who purchases the lands so offered for the amount of the taxes, interest and penalty, and pays therefor in cash the tax collector shall be required to bid off such lands to the trustees of the Internal Improvement Fund. Accordingly at the suggestion of the Board of Commissioners the legislature enacted in 1917 a statute containing such a provision for the bidding off of such lands to the trustees of the Internal Improvement Fund.

The legislature by section 8, chapter 6456 of the Acts of 1913, as amended in 1915 and 1919, enacted that the Board of Commissioners on the second Tuesday in January of each year, shall prepare for each county in which lands of Everglades Drainage District lie, a list of the lands in such county which are also embraced in the drainage district. The statute required that after public notice had been given of the preparation of such tax lists, and an opportunity for hearing, the lists shall be forwarded by mail to the tax assessors of the respective counties in which the lands of the drainage district lie.

The legislature by section 9, of chapter 6456 of the Acts of 1913, as amended in 1915, enacted that upon receipt of the tax list the tax assessor of the county shall enter upon the tax rolls of the county, the tax or assessment shown by the list to be assessed for drainage taxes for the particular year against the lands described in the list, in a separate column under the head of, "Drainage Taxes" and [fol. 24] opposite the name of the owner of the land. The tax assessment shall constitute a lien upon the lands so assessed as of the first day of January of each year in which the entries on the tax rolls are made; which lien

shall be superior in dignity to all other liens upon said lands and equal in dignity to the lien for state and county taxes upon said land.

The tax assessor of the county is required by the statute to attach to the tax roll for each year, a special warrant to the tax collector of the county directing the tax collector to collect the drainage taxes, and such warrant shall be the authority of the tax collector for the collection of the drainage taxes, and shall remain in full force until all of the drainage taxes shown in the tax rolls to have been assessed shall be collected. The warrant for the collection of the drainage taxes which is addressed to the tax collector of the county is specifically required by the statute to read as follows: "You are hereby commanded to collect out of the real estate against which drainage taxes are assessed and set forth in this roll; and from the persons or corporations named therein, against whose lands drainage taxes are assessed, the drainage tax set down in said roll opposite each name, corporation or parcel of land therein described, and in case such drainage tax is not paid on or before the first day of April next, you are to collect the same by levy and sale of the lands so assessed; and all sums collected for drainage taxes you are to pay to the Board of Commissioners of Everglades Drainage District."

All drainage taxes levied by the statute on the lands in Everglades Drainage District are required to be collected on or before the first day of April following the year in which the tax is placed on the tax roll, and if the drainage tax is not paid on or before April 1st, of such year, the tax collector is required by the statute to advertise and sell at public sale the lands on which such unpaid drainage taxes were assessed.

[fol. 25] The legislature by section 12, of chapter 6456 of the Acts of 1913 as amended in 1917, enacted that on the day designated in the notice of sale, the tax collector shall sell so much of each parcel of land as shall be sufficient to pay the drainage tax, costs and charges thereon, and in case there are no bidders the statute requires that the whole tract shall be bid off by the tax collector for the trustees of the Internal Improvement Fund, and shall be held by the said trustees during the period allowed in the statute for the redemption of said lands, in like manner and with like effect as lands sold to the state for

non-payment of state and county taxes and held by the state as now provided by law. The land offered for sale by the tax collector shall be struck off to the person who will bid the taxes thereon, the costs and charges, for the least portion of the land.

The legislature by the same section of the statute enacted that the tax collector shall require immediate payment by any person to whom any parcel of such land is struck off.

The legislature by section 14, of chapter 6456 of the Acts of 1913, as amended by the Acts of 1915, enacted that the tax collector shall give to the purchaser at such sale, a certificate of such sale, which the statute requires to be in the following form:

"I — —, tax collector of the County of —, in the State of Florida, do hereby certify that, pursuant to notice published as by law required, I offered for sale at public auction on the — day of — A.D. 19—, at the Court House in said County, the lands hereinafter described, in the manner provided by law, for the amount due and unpaid for drainage tax, costs and charges on said lands for the year 19—. The said lands were knocked off and sold to — —, the same paying the amount of said unpaid drainage tax, costs and charges. And that if this [fol. 26] Certificate is not redeemed within two years from this date by payment of said amount, with interest thereon at the rate of two per centum per month from April 1st of the present year until April 1st of the following year, and eight per cent per annum thereafter, the holder thereof, or his assigns, will be entitled to receive a deed of conveyance of such lands in accordance with law, unless the holder at the time shall be the Board of Commissioners of Everglades Drainage District, in which case the title to such lands will then vest in said Board without the issuance of a deed.

Said lands are described as follows, to-wit: — located in — County, State of Florida."

The legislature by section 16, of chapter 6456 of the Acts of 1913, as amended by the Acts of 1915, 1917 and 1925, enacted that when lands are bid off by the tax collector for the trustees of the Internal Improvement Fund, the tax certificates shall be issued by the tax collector as of the date of sale in the name of the Trustees of the

Internal Improvement Fund, and that, if the land is not redeemed on or before two years from the date of such certificates, title to the lands shall immediately vest in the trustees, without the issuing of any deed as provided in other cases, and a certificate held by the said trustees shall be evidence of the title of the said trustees as to the lands embraced in such certificate. After title shall have become vested in the trustees, the said trustees may sell and convey the said lands by deed at the best price obtainable therefor, provided such price shall not be less than the amount of all drainage taxes upon the said lands which are due thereon pursuant to the provisions of the statute, together with interest, penalties and costs, and provided that no such lands shall be sold by the said trustees until four weeks notice of the intention of such trustees to make such sale shall have been made in the manner required [fol. 27] by the statute. The owner of the lands embraced in any such tax sale certificate, or his successor in title, shall at any time prior to the day of sale of such lands, have the right to redeem the same by paying the amount expressed on the face of such tax sale certificate, together with interest thereon at the rate provided in the statute, and by paying the annual taxes for each subsequent year, together with interest at the rate provided in the statute.

When the owner, or his successor in title, shall apply to redeem, and redeem, any lands embraced in such tax sale certificates after two years from the date of such certificates, the trustees shall execute and deliver to the party making such redemption a quit claim deed to the land so redeemed, which deed shall be signed by the trustees as other deeds by them are signed, and shall vest in the grantee the fee simple estate of such lands, free from all liens of any character except such liens as may exist for state and county taxes thereon, and such deeds shall be incontestable.

The proceeds of the sale of such lands by the trustees of the Internal Improvement Fund become the property of such trustees, as the foregoing statute provides that the proceeds from the sale of such lands shall be applied by said trustees to the payment of drainage taxes and assessments and other obligations of the trustees.

The legislature by section 17 chapter 6456 of the Acts of 1913, as amended by the Acts of 1915 and 1917, enacted that any tax certificate issued under the provisions of the

statute, may be redeemed by the owner of the lands covered by such certificate by paying to the clerk of the Circuit Court for the county, wherein such lands may lie, on or before two years from the date of such certificate, the amount of the drainage tax due thereon for such year, and all costs and charges as shown by said certificate, and interest on said amounts from the first day of April preceding such sale at the rates of interest provided in [fol. 28] the statute, together with all subsequent omitted taxes imposed under authority of the statute and due and payable thereon.

The statute also provides that in the event that the tax certificate is not redeemed as provided in the statute, the holder thereof may apply to the Clerk of the said Circuit Court for a deed to said lands described in said certificate. The Court shall thereupon cause a notice of such application to be published, and during such time the owner of said lands may redeem such tax certificate by paying to said Clerk the amount due, but, if at the expiration of the time fixed in the notice for the making of the deed, such certificate is not redeemed as provided in the statute, the Clerk of the Circuit Court shall execute a deed to the holder of such certificate for the lands therein described. Such deed shall be in substantially the same form as now prescribed for tax deeds, and shall vest in the grantee the fee simple title to such lands therein described, free of all liens except for state and county taxes.

The statute further provides that if the certificate so redeemed is held by the trustees of the Internal Improvement Fund, the Clerk shall transmit to such trustees the amount paid on the redemption of such certificate, and said trustees shall forward to the Clerk such certificate for cancellation. Accordingly the proceeds of the redemption of tax certificates held by the trustees of the Internal Improvement Fund become the property of the trustees.

The said statute also provides that if any tax deed, or any deeds by the trustees of the Internal Improvement Fund, be invalid for the reason that the lands sold were not subject to drainage tax or that the tax thereon had been paid at the date of sale, the Board of Commissioners or the trustees of the Internal Improvement Fund, as the case may be, shall on application therefor, refund to the purchasers of the lands so sold or of the lands so sold to the trustees of

the Internal Improvement Fund and by them sold to the [fol. 29] purchaser, the amount of the drainage taxes received in connection therewith with interest at the rate prescribed in the statute. The trustees of the Internal Improvement Fund are, therefore, required under this statute to refund to the purchaser, who holds an invalid deed from the trustees, the amount received by the trustees, as the amount so received would have been the property of the trustees had the deed been valid; where, however, the deed was not given by the trustees, the Board of Commissioners, who received the consideration, must refund it if the deed be invalid.

This statute not only required the trustees of the Internal Improvement Fund to bid in the lands not otherwise sold at the tax sale, and to take a tax certificate as purchaser in the same form as any other purchaser, but it makes the proceeds of the sale or redemption of lands so bid in by the trustees, the property of the trustees, just as the lands themselves were the property of the trustees subject to the right of the redemption. If the statute had required the trustees to hold the lands in a fiduciary capacity as the representatives of the Board of Commissioners, it would have required the trustees to hold the proceeds or redemption of the lands in the same way, but, as the statute required the trustees to hold as their own the lands bid in for them at the tax sale, subject to redemption, it permits the trustees to hold the proceeds of the sale or redemption of the lands in the same way.

The legislature, by section 5, chapter 6456 of the Acts of 1913, as amended, enacted that lands within the Everglades Drainage District held by the trustees of the Internal Improvement Fund shall be subject to the drainage taxes imposed by the statute, and to all other taxes including maintenance and ad valorem taxes levied or to be levied by the Board of Commissioners of said district and the said trustees in furtherance of the trusts upon which the lands are held, are authorized and empowered by the statute [fol. 30] to pay the same out of any funds in their possession derived from the sale of lands or otherwise.

The legislature by section 6, Chapter 4322 of the Acts of 1895, as amended, has enacted that when land is bid off by the tax collector for the State of Florida, the tax certificate shall be issued by the tax collector to the state, in the name of the Treasurer, and if the land is not redeemed

or the certificate sold by the state, the title to the land shall, at the expiration of the time for redemption vest in the state without the issuance of any deed, as provided for in other cases, and the certificate shall be evidence of the title of the state, and none of the provisions of the statute providing for the issuing of a deed shall apply in such cases, and in all cases in which land has been sold or purchased by the state and a certificate has not been sold or the land has not been redeemed, and the time for redemption is passed, it shall not be necessary for the state to procure a deed, but the title shall be held to be in the state, and the certificate shall be evidence of the title of the state. Under the laws of Florida, the land sold to the state for non-payment of taxes is subject to the right of redemption at any time before a tax deed is issued to a purchaser of the certificate from the state.

In like manner the lands sold to the trustees of the Internal Improvement Fund is owned by said trustees, subject to the right of redemption, in accordance with the provision of the statute that such lands bid off to the trustees during the period for redemption of said lands shall be held in like manner and with like effect as lands sold to the state for non-payment of state and county taxes and held by the state.

The legislature by Section 1, Chapter 6158 of the Acts of 1911, enacted that the State of Florida should not be required, [fol: 31] to pay taxes on lands bid in to the state for non-payment of taxes, in that the statute provides that the tax assessors in making up their assessment rolls shall place thereon the lands certified to them by the state comptroller as having been sold to the state for taxes, and shall enter their valuations of the same on the tax rolls, and shall mark against such lands on their tax rolls the words, state tax certificate. The amount of taxes on such lands shall not be extended on the tax roll, but when said lands are redeemed from the tax certificate under which they were sold, the person redeeming shall also pay the taxes for the years in which the said lands are marked as aforesaid, at the rate of taxation levied thereon in those years respectively, together with interest as provided by law.

Notwithstanding the taxes for which the lands are bid in to the state under the foregoing statute are general taxes and not, as in the case of drainage taxes, special assessments, the Legislature considered it prudent to include in the statute

a definite express provision that, while the lands bid off to the state and of which the state becomes the owner, should be included in the tax roll, the amount of taxes should not be extended on the roll, and the state should not be required on state owned lands to pay general taxes to itself.

In the statute providing for the levy of drainage taxes in the Everglades Drainage District, which taxes are special assessments, it is provided, as hereinbefore set forth, that the Board of Commissioners shall include in the tax lists, which they are required to prepare, all lands in the district, and the assessors are required by the statute to include within the tax roll all lands of the district and to extend against those lands the rate of drainage tax thereon provided in the statute. The trustees of the Internal Improvement Fund, which as hereinbefore set forth are authorized and empowered to pay the drainage taxes on all lands held by [fol. 32] them in the district, are not in a position as owners of such lands similar to the state as the owner of lands bid off to it, as the trustees are also the owners of the proceeds of sale or redemption of such lands, which they may use to pay their own obligations, and any profits which are realized by the trustees on the sale of the lands are the profits of the trustees. The complainants are informed and believe, and therefore allege that, at the suggestion of the Board of Commissioners and in order to make possible the sale of additional bonds of such Board, the Legislature enacted a provision of the statute in which the lands offered by the tax collector for sale and not otherwise purchased, should be bid in for the trustees, the intention being that to the extent that the assets of the trustees were sufficient for that purpose, default in the payment of drainage taxes should become impossible.

The trustees of the Internal Improvement Fund by action taken at meetings of the trustees, and by their conduct in paying for the tax certificates representing lands bid in for them and by paying the drainage taxes thereon, have fully recognized their obligation under the statutes hereinbefore set forth, to pay for such tax sales certificates and to pay the drainage taxes on the lands represented thereby.

In the minutes of a meeting of the trustees of the Internal Improvement Fund held on March 10th, 1924, the following preamble and resolution were adopted, in which it was conceded by the trustees that they were required

to pay for such tax sale certificates not later than two years from the date of the sale of the lands represented thereby, and in which the trustees agreed, as an inducement to Spitzer, Rorick & Company to purchase the bonds issued under the Act of 1923, and as part consideration for such purchase, that if necessity should arise the trustees would pay for such tax sale certificates at an earlier date.

"Whereas, a difference of opinion has arisen between Messrs. Tracy, Chapman and Welles of Toledo, Ohio, [fol. 33] attorneys selected and agreed upon by the Board of Commissioners of Everglades Drainage District and the firm of Spitzer, Rorick and Company of Toledo, Ohio, purchaser of Everglades Drainage District Bonds, issued under authority of the Act of the Legislature of 1923, to pass upon the legality and collectibility of the bonds and of the sufficiency of the taxing power back of the issue, and the Trustees of the Internal Improvement Fund and J. B. Johnson, their Special Counsel, such differences of opinion being as to the time when the Trustees of the Internal Improvement Fund should pay for drainage tax certificates issued to them by the Tax Collectors at sales of lands for non-payment of Everglades Drainage District Taxes; the said Messrs. Tracy, Chapman and Welles, holding that the law correctly construed provides that the Trustees of the Internal Improvement Fund should pay for all drainage tax certificates at the time and on the date of such sale and issuing of said certificates to them; the Trustees of the Internal Improvement Fund and its Counsel holding that the law contemplates and provides that the amounts involved in such drainage tax certificates should not be paid by the Trustees until such certificates have ripened into title in said Trustees, such ripening into title being two years from the date of such tax sales; Therefore,

Be it Resolved, By the Trustees of the Internal Improvement Fund of Florida, that should the necessity ever arise, by reason of the non-payment of drainage taxes in an amount sufficient to promptly take care of and pay off any maturing bonds of the Everglades Drainage District, or to take care of and pay off any maturing interest coupons from any of said bonds, that then the Trustees of the Internal Improvement Fund shall and will anticipate

the time, and pay for, out of any funds available, a sufficient amount of Everglades Drainage District tax sale certificates, to promptly meet and pay any such maturing bonds and interest coupons to the extent of the sum of the unpaid certificates then held by the Trustees, if necessary."

In a letter from Spitzer, Rorick & Company to the Trustees of the Internal Improvement Fund dated March 15th, 1924, after referring to the adoption by the Trustees of the foregoing resolution, the purchasers stated as follows, that "they purchased the said bonds in reliance upon the adoption by the trustees of the said resolution:

"As you are aware, the undersigned, as of date of July 18th, 1923, proposed to the Everglades Drainage District to purchase bonds in the aggregate amount of \$2,200,000, issued by said Board, which proposition was duly accepted by said Board at a meeting thereof, duly held on July 24, 1923. Under the last paragraph of the proposition aforesaid, Messrs. Tracy, Chapman & Welles were agreed upon by said Board and the undersigned as the counsel which approve the legality and collectibility of said bonds, in accordance with the terms and provisions of said proposition; and said firm, as a condition precedent to the issue [fol. 34] of its opinion as therein set forth, has required that your Board pass the Resolution as hereinabove referred to.

We are addressing this communication to you to evidence the fact that we are taking the bonds described in our said proposition, relying upon the passage by your Board of the Resolution above referred to, to the end that said Resolution and this acceptance of its terms by us may constitute an agreement between us and between your Board and the future holders of said bonds, in accordance with the terms and provisions set forth in said Resolution."

To induce Spitzer, Rorick & Company to purchase bonds issued under the statute of 1923 as amended, the trustees of the Internal Improvement Fund agreed to pay the Board of Commissioners of Everglades Drainage District promptly for tax sales certificates representing lands bid in for the trustees, in the same way as an individual who had bid in lands would be required to pay for such certificates, and the trustees set forth their agreement as part of the minutes

of a meeting of such trustees, held on June 16th, 1925, as follows:

"The following communication from Spitzer, Rorick & Company was read and ordered placed of record, and the original filed with the Secretary of the Trustees:

Tallahassee, Fla., June 15, 1925.

To the Honorable Trustees of the Internal Improvement Fund of Florida, Capitol Building, Tallahassee, Florida:

GENTLEMEN:

Referring to our proposition of this date addressed to the Honorable Board of Commissioners of Everglades Drainage District to purchase certain bonds therein mentioned including \$5,700,000 5% refunding bonds of said District and \$1,250,000.00 new bonds to be issued during 1926, which bid is now on file with said Drainage Board; We, hereby confirm the agreement of your Board on June 12th, that because you own approximately 1,000,000 acres of land in said Drainage District and are interested in its development, that as an inducement for us to submit said proposition and to purchase said bonds therein specified, your Board agreed to promptly pay the Drainage Board for all Everglades Drainage Tax Sale Certificates heretofore bid off to you by the Tax Collector, and to hereafter at the time of the tax sales pay the Everglades Drainage District taxes on all lands bid in to you by the Tax Collectors. In other words you will hereafter pay cash for said tax sale certificates just the same as any individual purchaser thereof.

[fol. 35] This agreement to continue until said bonds are paid or until modified by mutual consent of your Board and our Firm.

Yours very truly, Spitzer, Rorick & Company, by
H. C. Rorick.

It was moved by Mr. Luning that the Agreement between the Trustees of the Internal Improvement Fund and Spitzer, Rorick & Company, as contained in the foregoing letter, be adopted. Seconded by Mr. Amos, the vote was as follows:

Ayes:

Governor Martin:
Comptroller Amos.

Treasurer Luning.

Attorney General Buford, and

Commissioner of Agriculture, Mayo.

Nays:

None."

The complainants are informed and believe, and therefore allege, that the trustees of the Internal Improvement Fund have paid for all tax sale certificates bid in for them to and including the sales made for the 1927 drainage taxes, and have paid the drainage taxes on the lands represented by such certificates, but that the trustees have not paid for the tax sale certificates representing lands bid in for them on sale for the 1928 drainage taxes and subsequent drainage taxes.

The complainants are informed and believe, and therefore allege, that the lands in Everglades Drainage District bid in for the trustees of the Internal Improvement Fund, and which have neither been sold by such trustees nor redeemed by the former owners, represent a substantial part of all the lands in said drainage district, and that a substantial part of the lands thus bid in for the trustees have been held by such trustees for a period of more than two years from the date at which such lands were so bid in.

The complainants are informed and believe, and therefore allege, that in 1929, the Board of Commissioners of Everglades Drainage District, being composed of the same public officials as constitute the trustees of the Internal Improvement Fund, for the purpose of extinguishing or [fol. 36] reducing the drainage taxes, levied by the statutes under which the bonds of the district had been issued, and which taxes had been levied for the purpose of paying the principal and interest of said bonds, recommended to the Legislature that a statute or statutes be enacted by the Legislature which would reduce or extinguish such drainage taxes, which constitute a part of the bond contract; the effect of such a statute would be to the security of such bonds and made it practically certain that the principal and interest of such bonds would not be paid.

The legislature by Section 6, of Chapter 13633, of the Acts of 1929, which Act was approved by the Governor of the State, who at that time was Chairman of the Board of Commissioners of Everglades Drainage District and of the trustees of the Internal Improvement Fund, enacted that,

in lieu and instead of all other acreage taxes or assessments on lands within Everglades Drainage District authorized at the time of the passage of said Act, annual assessments of drainage taxes are levied and imposed by said Act of 1929 upon all said lands within said Everglades Drainage District for the year 1929 and subsequent years as follows:

In zone 1, as defined in the statutes under which the bonds were issued, \$1.30 per acre for the years 1929 and 1930, and \$1.45 per acre thereafter; in zone 2, 95¢ per acre for the years 1929 and 1930, and \$1.10 per acre for each year thereafter; in zone 3, 80¢ per acre for the years 1929 and 1930, and 90¢ per acre for each year thereafter; in zone 4, 65¢ per acre for the years 1929 and 1930, and 75¢ per acre for each year thereafter; in zone 4a, 60¢ per acre for the years 1929 and 1930, and 75¢ per acre for each year thereafter; in zone 5, 50¢ per acre for the years 1929 and 1930, and 75¢ per acre thereafter; in zone 5a, 50¢ per acre for the years 1929 and 1930, and 75¢ per acre for each year thereafter; in zone 5b, 10¢ per acre for each of the years 1929 and 1930, and 15¢ per acre for each year thereafter. [fol. 37] Upon all other lands within said drainage district, except the lands which are exempt from acreage tax under the provision of the prior acts, a tax of 8¢ per acre is levied for each of the years 1929 and 1930, and a tax of 9¢ per acre for each year thereafter.

In section 6 of the aforesaid Act of 1929, it is provided that there shall be deducted from the taxes levied by said Act of 1929, as to each acre of land within the said district in each year, an amount equal to the sum of money levied for each year upon such land, as an acreage tax, under the provisions of the Act of 1929, creating the Okeechobee Flood Control District, and such deduction shall be made by the Board of Commissioners at the time Everglades Drainage District taxes are certified to the several tax assessors.

By such Act of 1929 it was further provided that, the Board of Commissioners of Everglades Drainage District shall, as soon as practicable after the passage and approval of said Act, certify to the tax assessor of each county containing lands within said drainage district, the acreage taxes levied upon the said lands in accordance with the provisions of the Act of 1929, and that each tax assessor shall enter upon the tax roll for the year 1929, the amount

of taxes so certified, in lieu of other acreage taxes certified by said Board to the said tax assessor for that year.

By said Act of 1929 it is further provided that the Board of Commissioners of Everglades Drainage District shall have the right to reduce the taxes levied by that Act in each of the zones of the district proportionately, to the extent of not more than 25% of the levies provided for in said Act, and from time to time to readjust such levies on each of said zones and lands proportionately, not to exceed the amount per acre levied by the Act of 1929 in any of such areas.

By Section 26 of said Act of 1929, the Legislature enacted [fol. 38] that, for the purpose of funding, retiring and paying obligations then owing by said Everglades Drainage District, which are not evidenced by bonds, and for the purposes of the district generally, the Board of Commissioners of Everglades Drainage District is authorized to issue and sell bonds in an amount not to exceed \$3,000,000, in addition to all bonds actually issued and outstanding, and no levy is made of additional drainage taxes to take care of the requirements of the bonds authorized by that section.

By the Act of 1929, the Legislature attempted to repeal the taxes levied by the statutes under which the bonds of the Board of Commissioners were issued and for the payment of which the taxes were levied at the rates set forth in the statute, and the Legislature attempted to substitute therefor, taxes at substantially lower rates.

14. The complainants are informed and believe, and therefore allege, that in 1929, the Board of Commissioners of Everglades Drainage District, for the purpose of preventing the application to the bonds issued by the said Board of the taxes levied by the Statute and pledged and appropriated for the payment of the bonds, recommended to the Legislature that a statute be enacted which would create a district substantially identical with the Everglades Drainage District, and which would in effect appropriate the taxes which were levied under the statutes under which the bonds were issued.

The Legislature, by Section 1, Chapter 13,711, of the Acts of 1929, which Act was approved by the Governor of the State of Florida, who at the time was a member and chairman of the Board of Commissioners of Everglades

Drainage District, enacted that a special taxing district be thereby established, to be designated as Okeechobee Flood Control District. The district, as established by the statute, is practically the Everglades Drainage District with some additional territory, and it was created for [fol. 39] the purpose of taking over and financing certain improvements which theretofore had fallen within the scope of the powers conferred upon Everglades Drainage District. This Act and Chapter 13,633 of the Laws of 1929, which as heretofore set forth, substantially reduced the taxes levied by the prior Everglades Drainage statutes and by such statutes pledged and appropriated as security for the outstanding bonds, were obviously companion bills, were approved on the same day, and Chapter 13,633 refers to the Okeechobee Flood Control Act. The two Acts are inter-related in a number of ways, and from the point of view of the holders of the outstanding bonds of Everglades Drainage District, the two Acts are one piece of legislation. The Okeechobee Flood Control Act authorizes the levy of acreage taxes upon four defined zones for the purpose of financing the operations of the Flood Control District, including the payment of the principal and interest of \$3,000,000 of bonds which the Flood District is authorized to issue. Under the provisions of Chapter 13,633 of the Acts of 1929, the amount of acreage taxes, levied for the Okeechobee Flood Control District, are required to be deducted from the taxes levied under said Chapter 13,633, so that if Chapter 13,633 merely reduces, without extinguishing, the taxes levied, pledged and appropriated for the payment of the Everglades Drainage District bonds, the result of the enactment of the Okeechobee Flood Control Act is to reduce, to the extent of the taxes authorized by that Act, the amount of acreage taxes levied for the Everglades Drainage District, and has the effect of financing the operations of the Okeechobee Flood Control District at the expense of the holders of the bonds of Everglades Drainage District, in violation of the express provisions of the statutes under which the bonds of Everglades Drainage District were issued, and in violation of the Constitution of the State of Florida; and of Section 10, Article I, of the Constitution [fol. 40] of the United States, which provides that no law shall be passed which impairs the obligation of a contract.

The Legislature, by the enactment of said Chapter 13,711, resorted to the device of creating a new sub-division, for

the purpose of assisting the Board of Commissioners of Everglades Drainage District in avoiding its contract obligations represented by its outstanding bonds, by creating a new district embracing practically the same territory and appropriating to said new district, drainage taxes that were theretofore levied, pledged and appropriated for the payment of the outstanding bonds of Everglades Drainage District.

15. The Legislature, by Section 1, Chapter 8412, of the Acts of 1921, enacted that there is hereby levied and assessed upon all real, personal and mixed property in Everglades Drainage District, annually, beginning with and including the year 1921, a tax of one mill on each \$1,000 valuation, the said tax to be known as a maintenance tax, which shall be used for the maintenance, repair, upkeep and for general purposes of the district. No taxes are levied upon the lands within Everglades Drainage District for the purpose of meeting the requirements of the outstanding bonds of that district except the taxes, as heretofore set forth, levied by the statute under which the bonds were authorized to be issued and were issued.

16. Under the provisions of the statutes under which the bonds of Everglades Drainage District were issued, as heretofore set forth, the Treasurer of the State of Florida, as custodian of the funds of the District, was directed and commanded, as such custodian, to pay in to a sinking fund for the payment of the principal of said bonds, an amount not less than 2% of the principal of said bonds outstanding; the State Treasurer has not complied with the requirements of said statute in making said payments into the sinking fund, and the complainants are informed and believe, and therefore allege, that although bonds of said district have [fol. 41] been outstanding for many years, there are at present no funds in said sinking fund. While failing to maintain the sinking fund as required by the statute, the State Treasurer has applied the funds of the district, in his hands as custodian, to other purposes. The Board of Commissioners have become indebted to the Arundel Corporation, a corporation of the State of Maryland, approximately in the sum of \$180,000, which indebtedness is not represented by bonds of Everglades Drainage District, and notwithstanding the pledging of the funds of the District for the payment of the outstanding bonds and the re-

quirement that a sinking fund be maintained, the State Treasurer at a time when there were no funds in the sinking fund, and he did not have on hand sufficient funds to pay in full the principal and interest of the bonds which fell due on January 1st, 1913, and when he knew that there was no reasonable expectation of receiving such funds in time to pay such bond obligations, made payments on account of the indebtedness of the Arundel Corporation, and made payments for various other purposes. At the time at which the Treasurer of the State made such payments he expected and intended that the Board of Commissioners would not pay the principal and interest of the outstanding bonds which were about to become due on January 1st, 1931, and in fact the said Board did not pay the principal and interest which became due on that date.

The complainants are informed and believe, and therefore allege, that, the Board of Commissioners of Everglades Drainage District, and the Treasurer of the State, as custodian of the funds of such District, intend that no funds of said District shall be applied to the payment of the principal or interest on the outstanding bonds of the District as the same become due, except and unless the holders of such bonds shall consent to such reduction in the principal and interest of such bonds, and to the imposing of such conditions [fol. 42] concerning the deferment of payment and the amount of payment, as the said Board of Commissioners and said Treasurer in their unrestricted discretion shall see fit to impose. The representative of the said Drainage District has stated very frankly to these complainants and their representatives the attitude of the said Board of Commissioners.

The complainants are informed and believe, and therefore, allege, that the plain truth is that the trustees of the Internal Improvement Fund, in defaulting on their obligation to pay taxes, which was one of the vital inducements to the purchase of the bonds by the investing public, rely on the fact that the public officials who are the trustees of the Internal Improvement Fund and also members of the Board of Commissioners of Everglades Drainage District, and on the fact that the Board of Commissioners are not disposed to enforce the trustees to discharge the obligation into which they entered for the benefit of the bondholders. The complainants are informed and believe, and therefore allege, that, the trustees of the Internal Improve-

ment Fund are indebted to the Board of Commissioners for the amount of the face of the tax sales certificates bid in for the lands covered by such certificates, and that the Board of Commissioners would, long since, have secured judgment against the Trustees for the amount of such obligation, but for the fact that the Board of Commissioners are willing that the Trustees should not pay such drainage taxes.

The complainants are informed and believe, and therefore allege, that, the Board of Commissioners are willing that other land owners in the district should not pay their taxes, and said Board openly takes the position that no means should be taken by them to collect drainage taxes until the bondholders have reduced their obligations and deferred their payments to the extent required by the Board. Complainants are informed and believe, and therefore allege, that the Board of Commissioners have encouraged landowners in the District in their attitude in refusing to [fol. 43] pay the drainage taxes and have encouraged such landowners in the hope that if the taxes are not paid promptly, they will be substantially reduced and the bond indebtedness of the District will likewise be substantially reduced. To this end and for this purpose the Board of Commissioners pretend that the Trustees of the Internal Improvement Fund hold the lands bid in by them merely as trustees for the district, that the trustees are not required to pay for the tax certificates at any time or to pay any drainage taxes on such lands, that all payments of drainage taxes made by the Trustees were voluntary and without legal requirement, and that the landowners cannot be required to pay their taxes for the reason that the lands bid in for the trustees are held by them for the District, cannot be sold for cash, and the possession of the land by its owner cannot be disturbed, notwithstanding the non-payment of the taxes and the ownership of the land by the Trustees, and the land owner cannot be required to pay for the use of the land, notwithstanding its use may be very profitable to him. In other words, the bonds were sold by the Board of Commissioners as a flagrant means of deceiving and defrauding the investing public, who purchased the bonds in good faith and paid therefor in reliance upon the obligations having been for a period of time performed, but are now renounced with the approval of the Board of Commissioners.

17. Complainants are informed and believe, and therefore allege, that a substantial amount of drainage taxes have been collected between November 1st, 1930, and April 1st, 1931, and that the State Treasurer as custodian of the funds of the District has received substantial sums of money from such drainage taxes, that he has disbursed much of the funds received by him without applying any part thereof to the payment of the principal or interest of the bonds which matured on January 1st, 1931, and without paying any part thereof into the sinking fund, and that no part of such taxes or of the funds of the district have been [fol. 44] reserved by the Treasurer to pay the principal or interest of the bonds which matured on January 1st, 1931, and which will mature on July 1st, 1931. The State Treasurer has on hand certain funds which are not sufficient to pay in full the principal and interest of the bonds which matured on January 1st, 1931, which funds are held in trust by the State Treasurer as a fiduciary for the payment of the bonds, and the State Treasurer has no power to apply such funds to any purpose except for the payment of the principal and interest of the bonds, or into a sinking fund for that purpose.

Complainants as citizens of states other than the State of Florida have brought an action at law in this Court against the Board of Commissioners of Everglades Drainage District, for the purpose of recovering judgment on the bonds and coupons held by complainants, which matured on January 1st, 1931, and complainants will bring an action at law in this Court on certain bonds and coupons now held by them which will mature on July 1st, 1931. Under the law, complainants cannot secure from this Court a writ of mandamus compelling the State Treasurer as custodian of the funds of Everglades Drainage District, to apply such funds to the payment of the overdue bonds and coupons, as provided by law, until complainants have first secured a judgment at law on such bonds and coupons. Notwithstanding the statute provides, as hereinbefore set forth, that no defense can be made in the action to recover judgment in this Court on the over-due bonds and coupons except for forgery, and the Board of Commissioners have openly admitted that the bonds and coupons are not forged, no judgment can be secured in the said action at law in this Court for some time, and in the meantime the State

Treasurer is engaged in disbursing the funds held by him in trust for the payment of the bonds to other purposes to the irreparable injury and damage of complainants.

The Board of Commissioners of Everglades Drainage District are required by the statute, as hereinbefore set forth, to prepare annually a list of the lands within the [fol. 45] District including the amount of tax levied by statute for the year in question on such lands, and to forward such list to the assessors of the respective counties in which lands of the district lie, in order that the assessor may issue a warrant to the tax collectors for the collection of the drainage taxes specified in the tax list and on the lands designated in such list. In preparing the tax list for the year 1930, to cover taxes to be collected without penalty between November 1st, 1930, and April 1st, 1931, the Board of Commissioners did not include in such lists the lands which had theretofore been bid in by the tax collectors for the trustees of the Internal Improvement Fund, and they did not include in said tax lists the rate of taxes levied by the last statute under which bonds of the district were issued, but they did include only the smaller rate of tax contained in the statute of 1929, hereinbefore referred to; accordingly the warrants which were issued by the assessors to the tax collectors for the year in question directed the tax collectors to collect only such drainage taxes as had been included in the tax lists prepared by the Board of Commissioners and only on the lands included in such tax lists.

The complainants are informed and believe, and therefore allege, that the Board of Commissioners are about to prepare tax lists which will be forwarded by them to the tax assessors of the counties, from which tax lists the assessors will prepare the warrants to be delivered to the tax collectors as their authority for the collection of drainage taxes; notwithstanding the statute, as hereinbefore set forth, requires the Board of Commissioners to include in the lists for the year 1931, which is now being prepared or about to be prepared, all lands in the district and to include in the lists the rate of drainage tax provided in the last statute under which bonds of the District were issued, which rates for the year 1931 are set forth in paragraph 11 of this complaint, the Board of Commissioners [fol. 46] threaten to prepare and are engaged in preparing

or about to prepare a tax list for such year which will not include a substantial part of the lands of the District, and will not include any lands which have been bid in for the Trustees of the Internal Improvement Fund, notwithstanding such lands have been held by such Trustees for more than two years from the date of the sale, and will not include the taxes at the rates prescribed in the statute under which the bonds were issued, but will include taxes at a much smaller rate, which taxes as so included in the tax lists will be insufficient to pay the principal and interest of the overdue bonds and the principal and interest of the bonds which will become due on July 1st, 1931; such threatened action of the Board is in violation of the rights of complainants as holders of overdue bonds and coupons of Everglades Drainage District, and of bonds and coupons which will become due on July 1st, 1931. The said taxes, when collected and paid over to the State Treasurer as custodian of the funds of the District, become, as hereinbefore set forth, trust funds for the payment of the principal and interest of the outstanding bonds.

Forasmuch, therefore, as your orators are without remedy in the premises save in a Court of Equity, your orators do respectfully pray as follows:

1. That this Honorable Court will take jurisdiction of the parties and of the subject matter of this controversy and will enter such orders and decrees, both temporary and permanent as equity will require.

2. That, upon the entry of a final decree herein, the Court will find, order and determine:

- (a) That \$9,919,000 principal amount of the bonds of the Board of Commissioners of Everglades Drainage District have been issued and are now outstanding in the hands of the public, as bona fide owners for value, and that the said bonds are a valid obligation of the Board of Commissioners of Everglades Drainage District.

- [fol. 47] (b) That \$100,000 principal amount of the said bonds became due and payable on January 1st, 1931, and that \$— of interest on the outstanding bonds represented by interest coupons, became due and payable on January 1st, 1931, and that no part of said principal or interest of said bonds has been paid.

(c) That complainants are bona fide owners and holders for value of \$—, principal amount of bonds of the Board of Commissioners of Everglades Drainage District, including \$51,000.00, principal amount of such bonds which became due and payable on January 1st, 1931, and \$116,622.50 of interest coupons which became due and payable on January 1st, 1931.

(d) That drainage taxes were levied by the statute for the year 1931, to be collected without penalty between November 1st, 1931, and April 1st, 1932, on each and every acre of land in the district not specifically exempt from tax by the provision of the statute, at the rates provided in the statute and set forth in paragraph 11 of this Bill of Complaint. That such drainage taxes are a special assessment, and by the statute are appropriated, set apart and pledged for the payment of the principal and interest of the bonds issued by the Board of Commissioners and sold to the public, in the principal amount of \$9,919,000 now outstanding.

(e) That the Treasurer of the State of Florida is the custodian of the funds belonging to Everglades Drainage District, and as such custodian is required, out of the proceeds of the drainage taxes levied and imposed by the statute, and out of any other moneys in his possession belonging to the Board of Commissioners or to Everglades Drainage District, which moneys are set apart, appropriated and pledged to be applied to the payment of the interest on the bonds of said Board of Commissioners as the same shall fall due, and at the maturity of said bonds, to pay the principal thereof, and to pay into a sinking fund, annually, at least 2% of the principal amount of the bonds outstanding.

[fol. 48] (f) That the Board of Commissioners of Everglades Drainage District are required to prepare annually on the second Tuesday in January, for each county in which lands of the Drainage District lie, a tax list including all lands lying in such county and embraced in the Drainage District, and drainage taxes on the lands included in said list at the rates for the year 1931 prescribed in the statute under which the last bonds of the District were issued and which rates are set forth in paragraph 11 of this Bill of Complaint, and that the tax assessor of each

of said counties is required, for the year 1931, to issue tax warrants to the tax collector of the County to collect drainage taxes on all lands of the District lying within the County at said rates; and that the Board of Commissioners are about to prepare tax lists for the year 1931, which the Commissioners intend shall not include all the lands of the District lying in the respective counties and will not include drainage taxes at the rates required by the statute.

(g) That the State Treasurer as custodian of the drainage taxes collected and paid over to him and of the other funds of the drainage district, has applied such funds including the taxes paid for the year 1930, to purposes other than the payment of the principal and interest of the bonds which fell due on January 1st, 1931, and that he has not paid any part of the principal and interest of the bonds which fell due on that date, and that he is continuing to apply the funds of the District to various purposes without paying any part of the principal and interest of the over due bonds.

3. That this Court make an order enjoining and restraining W. V. Knott, the Treasurer of the State of Florida, as the custodian of the funds of Everglades Drainage District, from disbursing or applying any of such funds now in his possession or which he may hereafter receive, until the further order of this Court, except to the payment of the principal and interest of the bonds of the District [fol. 49] which fell due on January 1st, 1931, and to the principal and interest of the bonds which will fall due semi-annually thereafter, and to the payment of the sinking fund provided for in the statute at the rate of 2% per annum on the principal amount of the bonds outstanding, and that the Court's writ of injunction do issue for the aforesaid purposes.

4. That this Court make an order enjoining and restraining the Board of Commissioners of Everglades Drainage District from preparing and forwarding to the tax assessors of the respective counties in which lands of the District lie, tax lists for the year 1931, unless such tax lists shall include all the lands of Everglades Drainage District lying in the particular county on which taxes are imposed by the statute, and also include drainage taxes on all such lands at the rate set forth in the statute and in paragraph

11 of this complaint, and that the Court's writ of injunction do issue for the aforesaid purposes.

5. That in the alternative this Court appoint a receiver of the property, funds and income of said Everglades Drainage District as of the time of the making of such order, and all property, funds and income which may thereafter arise, including the proceeds of all drainage taxes.

6. That the process of this Court may be issued out of and under the seal of this Court, returnable as required by law, directed to and for services upon defendants, the Board of Commissioners of Everglades Drainage District, a corporation organized and existing under the laws of the State of Florida, Doyle E. Carlton, as Governor of the State of Florida, Ernest Amos, as Comptroller of the State of Florida, W. V. Knott, as Treasurer of the State of Florida, Cary D. Landis, as Attorney General of the State of Florida, Nathan Mayo, as Commissioner of Agriculture of the State of Florida, Marcus A. Milam, W. H. Lair, Ralph A. Horton, C. E. Simmons, and D. Graham Copeland, as and constituting the Board of Everglades Drainage [fol. 50] District; commanding them and each of them, upon a day therein named, to make full, true, and perfect answer unto this Bill of Complaint (answer under oath being waived), and further to stand to, abide by and perform such other and further orders and decrees, general or special, temporary or final, in the premises as Equity may require.

Wm. Roberts, Watson & Pasco & Brown, Solicitors
for Complainants.

EXHIBIT "A" TO BILL OF COMPLAINT

Number —

Number —

UNITED STATES OF AMERICA,

STATE OF FLORIDA

(State Seal)

Everglades Drainage District

\$1000.00.

The Board of Commissioners of Everglades Drainage District, in the State of Florida, a body corporate, duly organized and existing under the laws of said State, for

value received, hereby acknowledges itself indebted and promises to pay to bearer the sum of One Thousand Dollars (\$1000), on the date of maturity, — —, 19—, and to pay the interest thereon at the rate of Six percentum per annum, payable semi-annually on the first day of July and January in each year, upon the presentation and surrender of the respective coupons hereto annexed as they severally become due, both principal and interest of this bond being payable in gold coin of the United States, or its equivalent in lawful money at the office of the Treasurer of the State of Florida, or at the office of Spitzer, Rorick & Company, in the City of New York, State of New York, at the option of the holder.

This bond is issued for the purpose of completing and constructing canals, drains, dykes, dams, locks, reservoirs and other works necessary for the drainage of said District, under and pursuant to, and in full compliance with the Constitution of the State of Florida, and the Statutes of said State, including among others Chapter 6456, approved June 6, 1913, as amended by Chapter 6957, approved June 4, 1915, as amended by Chapter 7862, Laws of Florida, approved June 9, 1919, and Acts amendatory thereof and supplemental thereto, and in pursuance of resolutions and proceedings of the Board of Commissioners of Everglades Drainage District duly had and adopted.

The right is reserved to the Board of Commissioners of said Everglades Drainage District to redeem this bond on any interest paying period, before date of maturity, thereof, upon payment to the holder thereof, or to the State Treasurer at Tallahassee, Florida, or to Spitzer, Rorick & Company, in the City of New York, New York, of the principal of this bond, with all accrued interest thereon, together with [fol. 51] the premium of 2% on said principal, upon giving a written notice of such proposed redemption to said State Treasurer and said Spitzer, Rorick & Company, at least Ninety days before the time fixed for such redemption and by publication of said notice once a week for six successive weeks in a newspaper published in the cities of Tallahassee, Florida, and New York, New York, beginning not less than Ninety days next prior to the date fixed for such redemption. If this Bond when so called for redemption shall not be presented for payment it shall cease to bear interest from the date so fixed.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed, precedent to and in the issuance of this Bond, have existed, have happened and have been performed in due form and manner as required by law and that the amount of this bond, together with all the other indebtedness of said Board of Commissioners and of said Drainage District, does not exceed any limit prescribed by the Constitution and Statutes of said State and the full faith, credit and resources of said Board of Commissioners of said District are hereby pledged for the punctual payment of the principal and interest of this Bond.

This Bond may be converted into a registered bond upon presentation to the Treasurer of the State of Florida at Tallahassee, Florida, in which event such Treasurer shall cut off and cancel the coupons of this Bond, and shall sign a statement, stamped, written or printed upon the face of the back of this bond to the effect that this bond is registered in the name of the owner and that the interest and principal of this bond are payable to the registered owner thereof. Thereafter and from time to time this bond may be transferred by such registered owner in person, or by an Attorney duly authorized upon presentation of this Bond to the said Treasurer, and the bond may be again registered as before, a similar statement being stamped, printed or written thereon.

In Witness Whereof, the Board of Commissioners of Everglades Drainage District of Florida has caused this bond to be signed by each member of said Board and attested by the Secretary thereof, under the seal of the said Board, and the interest coupons hereto attached to be executed with the engraved or lithographed fac simile signature of the Chairman and Secretary of said Board, and this bond to be dated the first day of July, A. D. 1920.

Sidney J. Catts, Governor, State of Florida; Ernest Amos, Comptroller, State of Florida; J. C. Luning, State Treasurer, State of Florida; Van C. Swearingen, Attorney General, State of Florida; W. A. McRae, Commissioner of Agriculture, State of Florida; Board of Commissioners of Everglades Drainage District, Florida.

[fol. 52] Attest: J. Stuart Lewis, Secretary, Board of Commissioners of Everglades Drainage District, Florida.

(On Back of Bond)

Attorney General's Certificate

The within bond examined and certified to be regularly issued and a valid obligation of the Board of Commissioners of Everglades Drainage District, Tallahassee, Florida, the 3rd day of September, 1920.

Van C. Swearingen, Attorney General State of Florida.

Same Bond Form for Issue Dated January 1, 1921. Attorney General's Certificate Dated January 1, 1921.

EXHIBIT "B" TO BILL OF COMPLAINT

UNITED STATES OF AMERICA,

STATE OF FLORIDA

(State Seal)

Number —

Number —

Everglades Drainage District

\$1000.00

The Board of Commissioners of Everglades Drainage District in the State of Florida, a body corporate, duly organized and existing under the laws of said state, for value received, hereby acknowledges itself indebted and promises to pay to the bearer the sum of One Thousand Dollars (\$1000.) on the date of maturity, A. D. — —, 19—, and to pay the interest thereon at the rate of six per centum per annum, payable semi-annually on the 1st day of July and January in each year, on the presentation and surrender of the respective coupons hereto annexed as they severally become due; both principal and interest of this bond being payable in Gold Coin of the United States, or its equivalent in lawful money, at the office of the Treasurer of the State of Florida, or at the office of the National Park Bank in the City of New York, State of New York, at the option of the holder.

This bond is issued for the purpose of completing and constructing canals, drains, dikes, dams, locks, reservoirs and

other works necessary for the drainage of said District, under and pursuant to and in full compliance with the Constitution of the State of Florida and the statutes of said State, including among others Chapter 6456, approved June 6, 1913, as amended by Chapter 6957, approved June 4, 1915, as amended by Chapter 7862, approved June 9, 1919, as amended by Chapter 8413, Laws of Florida, approved June 10, 1921, and Acts amendatory thereof and supplemental thereto, and in pursuance of resolutions and proceedings of the Board of Commissioners of Everglades Drainage District duly had and adopted.

[fol. 53] It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed, precedent to and in the issuance of this bond, have existed, have happened and have been performed in due form and manner as required by law, and that the amount of this bond, together with all the other indebtedness of said Board of Commissioners and of said Drainage District, does not exceed any limit prescribed by the Constitution and Statutes of said State, and the full faith, credit and resources of said Board of Commissioners of said District are hereby pledged for the punctual payment of the principal and interest of this bond.

This bond may be converted into a registered bond upon presentation to the Treasurer of the State of Florida, at Tallahassee, Florida, in which event such Treasurer shall cut off and cancel the coupons of this bond, and shall sign a statement, stamped, written or printed on the face or back of this bond, to the effect that this bond is registered in the name of the owner and that the interest and principal of this bond are payable to the registered owner hereof. Thereafter, and from time to time, this bond may be transferred by such registered owner in person or by an attorney duly authorized upon presentation of this bond to the said Treasurer, and the bond may be again registered as before, a similar statement being stamped, printed or written thereon.

In Witness Whereof, the Board of Commissioners of Everglades Drainage District in the State of Florida has caused this bond to be signed by each member of said Board and attested by the Secretary thereof, under the seal of the said Board, and the interest coupons hereto attached to be executed with the engraved or lithographed facsimile signa-

tures of the Chairman and Secretary of said Board, and this Bond to be dated the 1st day of July, 1921.

Cary A. Hardee, Governor, State of Florida; Ernest Anjos, Comptroller State of Florida; J. C. Luning, State Treasurer State of Florida; Rivers Buford, Attorney-General State of Florida; W. A. McRae, Commissioner of Agriculture, State of Florida Board of Commissioners of Everglades Drainage District, Florida.

Attest: J. Stuart Lewis, Secretary, Board of Commissioners of Everglades Drainage District, Florida.

On the issue of bonds dated July 1, 1921, the certificate of the Attorney General was in the same form as that given above, and was dated July 1, 1921.

Same bond form and same form of certificate of the Attorney General for issue dated January 1, 1922, the Certificate of the Attorney General being dated January 1, 1922.

[fol. 54] EXHIBIT "C" TO BILL OF COMPLAINT

UNITED STATES OF AMERICA,

STATE OF FLORIDA

(State Seal)

Number —

Number —

Everglades Drainage District

\$1000.00.

\$1000.00.

The Board of Commissioners of Everglades Drainage District in the State of Florida, a body corporate duly organized and existing under the laws of said State, for value received, hereby acknowledges itself indebted and promises to pay to bearer the sum of One Thousand Dollars (\$1000), on the date of maturity, A. D., — —, 19—, and to pay the interest thereon at the rate of five and a half per centum per annum, payable semi-annually on the first day of July and January in each year upon the presentation and surrender of the respective coupons hereto annexed as they severally become due, both principal and interest of this

bond being payable in gold coin of the United States or its equivalent in lawful money, at the office of the Treasurer of the State of Florida, or at the National Park Bank in the City of New York, State of New York, at the option of the holder.

This bond is issued for the purpose of completing and constructing canals, drains, dikes, dams, locks, reservoirs and other works necessary for the drainage of said District, under and pursuant to and in full compliance with the Constitution of the State of Florida and the statutes of said State, including among others Chapter 9119, approved May 25, 1923, and Acts amendatory thereof and supplemental thereto, and in pursuance of resolutions and proceedings of the Board of Commissioners of said Drainage District duly had and adopted.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed, precedent to and in the issuance of this bond, have existed, have happened and have been performed in due form and manner as required by law, and that the amount of this bond, together with all the other indebtedness of said Board of Commissioners and of said Drainage District, does not exceed any limit prescribed by the Constitution and Statutes of said State, and the full faith, credit and resources of said Board of Commissioners of said District are hereby pledged for the punctual payment of the principal and interest of this bond.

This bond may be converted into a registered bond upon presentation to the Treasurer of the State of Florida, at Tallahassee, Florida, in which event such Treasurer shall cut off and cancel the coupons of this bond, and shall sign a statement, stamped, written or printed on the face or back of this bond, to the effect that this bond is registered in the name of the owner and that the interest and principal of this bond are payable to the registered owner hereof. Thereafter, and from time to time, this bond may be transferred by such registered owner in person or by an attorney duly authorized upon presentation of this bond to the said Treasurer, and the bond may be again registered as before, a similar statement being stamped, printed or written thereon.

In Witness Whereof, the Board of Commissioners of Everglades Drainage District of Florida has caused this

[fol. 55] bond to be signed by each member of said Board and attested by the Secretary thereof, under the seal of the said Board, the interest coupons hereto attached to be executed with the engraved lithographed fac simile signature of the Chairman and Secretary of said Board, and this bond to be dated the first day of July, A. D., 1923.

Cary A. Hardee, Governor; State of Florida; Ernest Amos, Comptroller State of Florida; J. C. Luning, State Treasurer State of Florida; Rivers Buford, Attorney General State of Florida; W. A. McRae, Commissioner of Agriculture, State of Florida, Board of Commissioners of Everglades Drainage District, Florida.

Attest: J. Stuart Lewis, Secretary, Board of Commissioners of Everglades Drainage District, Florida.

On the issue of bonds dated July 1, 1923, the certificate of the Attorney General was in the same form as that given above, and was dated October 1, 1923.

EXHIBIT "D" TO BILL OF COMPLAINT

UNITED STATES OF AMERICA,

STATE OF FLORIDA

(State Seal)

Number —

Number —

Everglades Drainage District

\$1000.00

The Board of Commissioners of Everglades Drainage District in the State of Florida, a body corporate, duly organized and existing under the laws of said State, for value received, hereby acknowledges itself indebted and promises to pay to the bearer the sum of One Thousand Dollars (\$1000) on the date of maturity, A. D., — —, 19—, and to pay interest thereon at the rate of Five per centum per annum, payable semi-annually on the first day of July and January in each year, upon the presentation and surrender of the respective coupons hereto annexed as they severally become due. Both principal and interest of this

bond being payable in gold coin of the United States or its equivalent in lawful money at the office of the Treasurer of the State of Florida, or at the office of the National Park Bank, in the City of New York, State of New York, at the option of the holder.

[fol. 56] This bond is issued for the purpose of completing and constructing canals, drains, dykes, dams, locks, reservoirs and other works necessary for the drainage of said district, under and pursuant to, and in full compliance with the Constitution of the State of Florida and the statutes of said State, including among others Chapter 9119, approved May 25, 1923, and Acts amendatory thereof and supplemental thereto, and in pursuance of resolutions and proceedings of the Board of Commissioners of Everglades Drainage District duly had and adopted.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this bond, have existed, have happened, and have been performed in due form and manner as required by law, and that the amount of this bond, together with all the other indebtedness of said Board of Commissioners and of said Drainage District does not exceed any limit prescribed by the Constitution and Statutes of said State, and the full faith, credit and resources of said Board of Commissioners of said District are hereby pledged for the punctual payment of the principal and interest of this bond.

This bond may be converted into a registered bond upon presentation to the Treasurer of the State of Florida, at Tallahassee, Florida, in which event such Treasurer shall cut off and cancel the coupons of this bond, and shall sign a statement, stamped, written or printed upon the face of the back of this bond to the effect that this bond is registered in the name of the owner and that the interest and principal of this bond are payable to the registered owner thereof. Thereafter, and from time to time, this bond may be transferred by such registered owner in person, or by an attorney duly authorized, upon presentation of this bond to the said Treasurer, and the bond may be again registered as before, a similar statement being stamped, printed or written thereon.

In Witness Whereof, the Board of Commissioners of Everglades Drainage District of Florida has caused this bond to be signed by each member of said Board and attested.

by the Secretary thereof, under the seal of said Board, and the interest coupons hereto attached to be executed with the engraved lithographed fac simile signature of the Chairman and Secretary of said Board, and this bond to be dated the first day of January, A. D. 1925.

John W. Martin, Governor, State of Florida; Ernest Amos, Comptroller, State of Florida; J. C. Luning, State Treasurer, State of Florida; Rivers Buford, Attorney General, State of Florida; Nathan Mayo, Commissioner of Agriculture, State of Florida, Board of Commissioners of Everglades Drainage District, Florida.

[fol. 57] Attest: J. Stuart Lewis, Secretary, Board of Commissioners of Everglades Drainage District, Florida.

On the issue of bonds dated January 1, 1925, the certificate of the Attorney General was in the same form as that given above, and was dated March 20, 1925.

EXHIBIT "E" TO BILL OF COMPLAINT

UNITED STATES OF AMERICA,

STATE OF FLORIDA

Number —

Number —

Everglades Drainage District

Refunding Bond

Series A

The Board of Commissioners of Everglades Drainage District, in the State of Florida, a body corporate, duly organized and existing under the laws of said State, for value received, hereby acknowledges itself indebted and promises to pay to the bearer the sum of One Thousand Dollars. (\$1000.00) on — —, A. D., —, and to pay the interest thereon at the rate of five per centum per annum, payable semi-annually on the first day of January and July in each year, upon the presentation and surrender of the respective coupons hereto annexed as they severally become due, both principal and interest of this bond being payable in gold coin of the United States, or its equivalent in lawful

money at the office of the Treasurer of the State of Florida, or at the office of the National Park Bank, in the City of New York, State of New York, at the option of the holder.

This bond is issued for the purpose of refunding certain valid, existing and outstanding bonded indebtedness of said District, under and pursuant to, and in full compliance with the Constitution of the State of Florida and the statutes of said State, including among others Chapter 10027, approved June 4, 1925, and acts amendatory thereof and supplemental thereto, and in pursuance of resolutions and proceedings of the Board of Commissioners of Everglades Drainage District duly had and adopted.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed, precedent to, and in the issuance of this bond, do exist, have happened, and have been performed in due form and manner as required by law, and that the amount of this bond, together with all the other indebtedness of said Board of Commissioners and of said Drainage District does not exceed any limit prescribed by the Constitution and statutes of said State, and the full faith, credit and resources of said Board of Commissioners of said District [fol. 58] are hereby pledged for the punctual payment of the principal and interest of this bond.

This bond may be converted into a registered bond upon presentation to the Treasurer of the State of Florida, at Tallahassee, Florida, in which event such Treasurer shall cut off and cancel the coupons of this bond, and shall sign a statement, stamped, written or printed upon the face or back of this bond to the effect that this bond is registered in the name of the owner, and that the interest and principal of this bond are payable to the registered owner thereof. Thereafter, and from time to time, this bond may be transferred by such registered owner, in person or by an attorney duly authorized, upon presentation of this bond to the said Treasurer, and the bond may be again registered as before, a similar statement being stamped or written thereon.

In Witness Whereof, The Board of Commissioners of Everglades Drainage District of Florida has caused this bond to be signed by each member of said Board and attested by the Secretary thereof, under the Seal of the said Board, and the interest coupons, hereto attached, to be executed with the engraved or lithographed facsimile signa-

ture of the Chairman and Secretary of said Board and this bond to be dated the first day of July, A. D., 1925.

John W. Martin, Governor, State of Florida; Ernest Amos, Comptroller, State of Florida; J. C. Luning, State Treasurer, State of Florida; Rivers Buford, Attorney General, State of Florida; Nathan Mayo, Commissioner of Agriculture, State of Florida, Board of Commissioners of Everglades Drainage District, Florida.

Attest: J. Stuart Lewis, Secretary, Board of Commissioners of Everglades Drainage District, Florida.

(On Back of Bond)

The within bond examined and certified to be regularly issued and a valid obligation of the Board of Commissioners of Everglades Drainage District, Tallahassee, Florida, the 1st day of October, 1925.

Rivers Buford, Attorney General, State of Florida.

Series B and Series C Refunding Bonds are in the same form as above and bear the same date, July 1, 1925.

[fol. 59] IN UNITED STATES DISTRICT COURT

AMENDMENT TO BILL OF COMPLAINT—Filed May 20, 1931

Now come the complainants and before any copy of their bill is taken from the office of the clerk, amend the same by adding thereto another paragraph, to be inserted immediately following paragraph numbered 7-b of the original bill, and to be numbered 7-c, in words and figures following, to-wit:

7-c. This suit in addition to being between citizens of different states and for that reason within the jurisdiction of this court, also involves questions arising under the Constitution and laws of the United States in that the said Chapter 13633, Laws of Florida, Acts of 1929, by undertaking to and providing for the levy of acreage taxes and assessments at a less rate than was provided for by legislation under which the bonds of the said defendant Board and District now outstanding were issued, and by providing for the diminution and diversion of such taxes by the

amount of taxes levied under the provisions of Chapter 13711, is in violation of the provisions of:

(a) Section 10 of Article I of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts, and the said Chapter 13633 does impair the obligation of the contract evidenced by the said bonds and provided by the laws under which they were issued; and

(b) The XIV Amendment to the Constitution of the United States and Section 1 thereof, which provides that no state shall deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. The said Chapter 13633 does operate to deprive the complainants and [fol. 60] other bond holders of the equal protection of the laws and of their property without due process of law, in that it takes away and diminishes the security afforded for the payment of the said bonds by the provisions of the various statutes under which they were issued.

(S) Wm. Roberts, (S) Watson & Pasco & Brown,
Solicitors for Complainants.


IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL BILL OF COMPLAINT—Filed July 4, 1931

Leave having been granted the plaintiffs by this honorable court to file this their supplemental bill of complaint, they thereupon further complain and, making all of the averments and showing unto the court the same facts which are set forth in their original bill of complaint, allege and show as follows, to-wit:

1. That on the 19th day of May, 1931, the plaintiffs filed their original bill of complaint in this court against the defendants therein named, being the defendants other than the said T. W. Weeks, the Trustees of the Internal Improvement Fund of the State of Florida and the clerks of the Circuit Courts of the various counties above named, for the purpose, amongst others, of enjoining the Treasurer of the State of Florida as custodian of the funds of Everglades Drainage District from applying such funds except

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

437

38-69



to the payment of the principal and interest which matured on January 1, 1931 of the bonds issued and sold by the defendant Board of Commissioners to bona fide purchasers for value, reference being made to the said bill for its allegations and prayers. Drainage taxes were levied by the statute, as set forth in the original bill filed herein, for the purpose of paying principal and interest of the bonds of said district issued and sold by the defendant Board of Commissioners and the proceeds of drainage taxes and other [fol. 61] funds of the district in the possession of the State Treasurer of Florida, were set apart, appropriated and pledged for the payment of the principal and interest of the bonds of said district, which were issued and sold and are now outstanding in the hands of bona fide purchasers for value. The said bill of complaint was filed also for the purpose of enjoining the defendant Board of Commissioners from preparing and forwarding to the tax assessors of the various counties in which lands of the district lie, as set forth in said bill, tax lists for the year 1931 unless said tax lists should include all the lands of the district lying in the particular county on which drainage taxes are imposed by the statute, and include also all drainage taxes on said lands at the rate or rates set forth in the statute and in paragraph 11 of the bill of complaint.

2. That the defendants to the original bill of complaint were duly served with subpoena and all of them have entered appearances herein, designated special appearances, and made motions to set aside the said subpoenas and the service thereof on the ground that the said suit was not brought in the proper district.

3. At the session of the Legislature of the State of Florida for the year 1931, and after the filing of the bill of complaint herein, there was enacted a statute entitled:

An Act Relating to Everglades Drainage District; Declaring the Existence of Such District; Validating Its Creation and Declaring Its Boundaries; Providing for Its Government, and for the Appointment of a Board of Commissioners Therefor; Defining the Duties and Powers of such Board; Levying Taxes for Everglades Drainage District; Providing for the Creation of Unit Districts and for the Government Thereof and for the Levying of Special Assessments for Such Unit Districts; Providing for the Main-

tenance of Works Heretofore Constructed by Everglades Drainage District and for the Levying of Taxes for Such Purpose; Providing for the Issuance of Bonds to Refund Debts of said District; Providing for the Issuance of Bonds of Unit Districts and for the Payment of Such Bonds; Providing a Method and Manner Whereby Certain Sub-drainage Districts may be Abolished and for the Maintenance of Works Constructed by Such Sub-drainage Districts; Providing a Method and Manner Whereby the Management of Certain Sub-drainage Districts may be Taken Over by Board of Commissioners of Everglades Drainage District; Providing for the Collection of Taxes and Special Assessments Levied and Authorized to be Levied by this [fol. 62] Act, for the Sale of Lands for the Non-payment Thereof and for the Foreclosure of Tax Liens; Providing for the Transfer of Certain Tax Sale Certificates to Board of Commissioners of Everglades Drainage District; Fixing the Compensation of Members of the Board of Commissioners of Everglades Drainage District; Providing for the sale of Lands which shall be Acquired by said District; Authorizing the Use of Bonds and Interest Coupons of said District in the Redemption of Lands from Certain Tax Sales and in the purchase of Certain Lands from said Board; Validating Certain Tax Sales and Tax Sale Certificates."

which statute, so far as valid, became effective on May, 1931, the date of the approval thereof by the Governor of the State of Florida, which statute will hereafter be referred to as the Act of May 20, 1931. The said Act was procured to be introduced as a special or local law by the defendant Board and the purpose thereof was stated in the published notice of the introduction thereof, as follows:

"The purpose of the legislation for the passage of which application will be made is to embrace within one statute all laws applicable to Everglades Drainage District; to provide an adequate form of management and an adequate system of taxation and finance for said District for the Purpose of retiring the obligations of said District now existing and to provide for the construction of reclamation works in the future upon a unit basis."

4. By the aforesaid Act of May 20, 1931, various changes were made in the statutes theretofore enacted pertaining to Everglades Drainage District, and the rights of the plain-

tiffs, as set forth in the original bill, were further invaded and the obligation of their bonds and the legislative contract under which they were issued were further impaired, in that:

(1) By Section 2 (a) of said Act of May 20, 1931, the governing board of said district is made to consist of five persons to be appointed by the Governor, instead of ten persons who then composed the Board of Commissioners. The Governor, pursuant to the Act of May 20, 1931, has appointed as the five Commissioners to compose the defendant Board four of the persons who were theretofore acting as Commissioners and were made parties defendant in the original bill of complaint herein, namely: Marcus A. Milam, W. H. Lair, Ralph A. Horton and C. E. Simmons, and the said Governor appointed as the fifth person to compose said Board of Commissioners T. W. Weeks, who had [fol. 63] not been acting as commissioner prior to the enactment of the said Act of May 20, 1931, and had not been made a party defendant in said original bill.

(2) As alleged in paragraph 11 of the original bill of complaint herein, drainage taxes were levied by the statute on lands in Everglades Drainage District at the rates specified in said paragraph 11, which taxes were levied for the purpose of paying the principal and interest of the bonds of said District outstanding and were sufficient for that purpose (if so used); the proceeds of drainage taxes in the hands of said State Treasurer were set apart, appropriated and pledged for the payment of said bonds and the said State Treasurer was required by the statute to apply the proceeds of said taxes to the payment of the principal and interest of the outstanding bonds of the said district.

By Chapter 13633 of the Laws of 1929, as set forth in paragraph 13 of the bill of complaint herein, the Legislature of Florida, at the suggestion and on the recommendation of the defendant Board of Commissioners, reduced the drainage taxes (without the consent of the holders of bonds theretofore issued) to the rates per acre set forth in said paragraph 13, and thus made the proceeds of the drainage taxes insufficient to pay the principal and interest of the outstanding bonds. Thereafter, interest on the outstanding bonds and certain of the principal thereof matured and became due and payable on January 1, 1931, and no part of said interest or principal has been paid.

By said Act of May 20, 1931, which became effective, so far as valid, since the filing of the bill of complaint herein, the Legislature of Florida repealed the drainage tax which had theretofore been levied for the payment of the outstanding bonds of the District and the proceeds of which had been pledged for such payment, and the Legislature by Section 7 of the said Act of May 20, 1931, levied drainage taxes for the purpose of paying principal and interest of said outstanding bonds, the language of said section being:

[fol. 64] "to pay the principal and interest of all obligations of Everglades Drainage District heretofore incurred and now outstanding."

at substantially reduced rates and which are substantially inadequate to provide for the payment of the overdue bonds and the interest thereon and for the payment of the principal and interest of said bonds as the same mature, and complainants are informed and believe, and therefore allege, that the said Board of Commissioners suggested and recommended to the Legislature the rates of drainage taxes provided in Section 7 of said Act of May 20, 1931, with the knowledge that such taxes would be substantially inadequate to pay the principal and interest of the outstanding bonds. The drainage taxes levied under said Act of May 20, 1931 vary from the maximum of 49¢ per acre to \$.0134 per acre as against drainage taxes levied by the statutes under which the bonds were issued, as set forth in paragraph 11 of the original bill of complaint, which vary from a maximum of \$1.50 per acre to 10¢ per acre.

(3) The tax lists or assessments rolls as the basis for the collection of drainage taxes under said Act of May 20, 1931, are required to be prepared and forwarded as therein provided in Section 48 and following sections of said Act. The plaintiffs are informed and believe and therefore allege that the tax lists or assessments rolls are now being prepared, or are about to be prepared, in accordance with the requirements of the said Act of May 20, 1931, and that such tax lists or assessment rolls do not and will not include all lands in Everglades Drainage District on which taxes were levied by the prior statutes to pay said bonds, as set forth in paragraph 11 of the original bill of complaint, and that said tax lists or assessment rolls include, or will include, drainage taxes to be applied for the

payment of principal and interest of the outstanding bonds at rates so reduced as to be wholly and substantially insufficient, even if collected in full, to pay the principal and [fol. 65] interest of said outstanding bonds, including the principal and interest which matured on January 1, 1931 and no part of which has been paid.

(4) By Section 56 (c) of said Act of May 20, 1931, the Legislature enacted that at the time named in the statute the tax collector of the county should offer for sale separately all lands delinquent for the payment of drainage taxes and that such lands should be struck off to the person who would pay the drainage taxes, costs and charges, and that if there should be no bidder for any tract of land offered for sale for drainage taxes the whole tract should be bid off by the tax collector for the Board of Commissioners of Everglades Drainage District. By the statute under which the said bonds were issued (Section 12 of Chapter 6456 of the Acts of 1913, as amended in 1917), as set forth in paragraph 13 of the bill of complaint, the tax collector was required, if there were no bidder for any tract of land offered for sale for drainage taxes, to bid off the land so offered for sale for the Trustees of the Internal Improvement Fund of the State of Florida, who were and are required by the statute to pay therefor and to pay all subsequent drainage taxes thereon. The plaintiffs are informed and believe and therefore allege that the purpose of the defendant Board of Commissioners in recommending to the Legislature that the lands offered for sale by the tax collector for non-payment of the drainage taxes should, in the absence of any bidder, be bid off by the tax collector to said Board of Commissioners in lieu of the Trustees of the Internal Improvement Fund, was to relieve said Trustees of the Internal Improvement Fund of any obligation to pay for the lands bid off to them and to pay the subsequent taxes, and thus to reduce the amount of taxes which will be available for the payment of principal and interest of the outstanding bonds.

(5) By Section 65 (a) of said Act of May 20, 1931, it is recited and declared that all tax sales certificates in the hands of the Trustees of the Internal Improvement Fund, which tax sales certificates were issued to the Trustees of the Internal Improvement Fund, *which tax sales*

[fol. 66] *certificates were issued to the Trustees of the Internal Improvement Fund* in pursuance of the sale of the lands for the non-payment of taxes levied by the statute, are held by such Trustees of the Internal Improvement Fund in trust for the defendant Board of Commissioners of Everglades Drainage District, and that the beneficial interest in and title to said tax sales certificates are vested in said Board of Commissioners, subject to the right of the Trustees of the Internal Improvement Fund to be repaid by said Board of Commissioners any sums of money which may have been advanced by said Trustees of the Internal Improvement Fund for the account of said Everglades Drainage District. By the foregoing Section 65 (a) of said Act of May 20, 1931 the said Board of Commissioners, at whose instance said statute was prepared by the attorney for said Board of Commissioners, desired and intended to relieve the Trustees of the Internal Improvement Fund from payment for lands which had been struck off to them by tax collectors of the various counties in Everglades Drainage District prior to the enactment of said Act of May 20, 1931, and thus reduce the proceeds of taxes which should be available for the payment of the principal and interest of the outstanding bonds theretofore issued.

(6) By Section 65 (b) of said Act of May 20, 1931, it was enacted that within ninety days after the Act went into effect, or as soon thereafter as practicable, the Trustees of the Internal Improvement Fund should assign, transfer and deliver to the defendant Board of Commissioners all tax sales certificates in the hands of the said Trustees, and that the Board of Commissioners should thereupon become seized and possessed of every right, title and interest then vested in said Trustees under said tax sales certificates. The said Act of May 20, 1931 further provided that whatever sum of money might be found to be owing by Everglades Drainage District to the Trustees of the Internal Improvement Fund should be adjusted at the time of the transfer of such certificates in such manner as may be agreed upon between the defendant [fol. 67] Board of Commissioners and the said Trustees, and that any such indebtedness might be paid, in whole or in part, by the relinquishment by said Board of all its rights in certain certificates, to be agreed upon between

said Board and such Trustees, it being further provided that any balance which might be owing to said Trustees after the said Board should have given credit for any certificates retained by the Trustees as aforesaid should be evidenced by certificates of indebtedness to be issued by the defendant Board of Commissioners to said Trustees. It was and is further provided that such certificates of indebtedness shall be receivable by the defendant Board of Commissioners from the Trustees of the Internal Improvement Fund, or from any person who shall thereafter purchase lands within Everglades Drainage District from such Trustees, in payment of Everglades Drainage District taxes as the same may become due and payable upon lands which at the enactment of said statute were held, or may hereafter be held, by the said Trustees, it being further provided that the indebtedness evidenced by such certificates should be liquidated as the said certificates are presented by the said Trustees, or their grantees, to the defendant Board of Commissioners in payment of drainage taxes upon said lands.

The defendant Board of Commissioners by presenting to the Legislature the foregoing Section 65 (b) of the statute which had been prepared by the attorney for said Board, desired and intended to relieve the Trustees of the Internal Improvement Fund from the obligation then resting upon them under existing statutes to pay in cash for the lands bid off to them by the tax collectors and to pay the drainage taxes which should become due on said lands while held by the said Trustees.

(7) By Section 65 (e) of said Act of May 20, 1931, the said Legislature enacted that upon the expiration of the time for redemption with respect to tax sales certificates which shall be retained by the Trustees of the Internal Improvement Fund, no further right to redeem should [fol. 68] exist and said Trustees should be deemed to have a fee simple title to all lands covered by un-redeemed certificates in their hands, and such lands should constitute part of the Internal Improvement Fund of the State of Florida.

(8) By Section 67 (a) of said Act of May 20, 1931, said Legislature enacted that any lands covered by tax sales certificates which should be transferred to the Board of Commissioners of Everglades Drainage District by the

Trustees of the Internal Improvement Fund may be sold by said Board at the best price obtainable therefor, and that said Board, in its discretion, might accept in payment of all or a part of the purchase price therefor bonds and/or matured interest coupons of Everglades Drainage District at par.

(9) By Section 67 (b), (c) and (d) of said Act of May 20, 1931 the Legislature enacted that any lands to which the defendant Board of Commissioners might acquire title in the future by virtue of tax sales thereafter to be made, might be sold by said Board at any time for the best price obtainable therefor, but not less than the amount of all unpaid district taxes thereon plus interest, penalties, costs and charges, and that all sales of land should be for cash or upon terms and security to be approved by said Board, but that deed should not be executed until full payment should have been made; and that said Board should not make sale of more than eighty acres of land in a contiguous body to a single purchaser unless notice of its intention to sell such lands be given by publication, and upon the making of any such sale in pursuance to such publication the said Board should accept the best bid therefor, subject to any limitations as to the amount for which the Board might sell such lands as specified in said Act.

(10) By Section 70 (a) of said Act of May 20, 1931 the Legislature enacted that the defendant Board of Commissioners may authorize the issuance of bonds for the purpose of refunding any bond, note, certificate of indebtedness or other obligation then outstanding, for the payment [fol. 69] of which the credit of Everglades Drainage District is pledged. The said statute does not levy additional taxes for the purpose of paying the principal and interest of bonds issued to refund obligations other than outstanding bonds.

(11) By Section 71 of said Act of May 20, 1931 the Legislature enacted that in the redemption of land from tax certificates that shall be transferred to the Board under the provisions of said Act, and in the redemption of land which shall be sold to said Board for non-payment of taxes assessed for the year 1930, the person entitled to redeem shall have the right to pay the amount required to redeem such land with bonds of Everglades Drainage

District then outstanding, and/or matured interest coupons attached to such bonds, and that such bonds or interest coupons shall be accepted in lieu of money at the par value thereof.

Wherefore, plaintiffs pray that they may have the same relief against the defendants as they might have had if the matters and things hereinbefore stated and charged by way of supplement had happened before the filing of their original bill and had been stated and charged therein, and renewing the prayer made in their original bill further respectfully pray:

1. That your honor will make such orders and decrees preliminary or final, as are prayed for in and by the original bill of complaint.

2. That this court determine that the Trustees of the Internal Improvement Fund of the State of Florida held and hold all the tax sales certificates and the lands represented thereby which were bid off to them by the tax collectors of the respective counties, not as Trustees for the Board of Commissioners of Everglades Drainage District as provided in said Act of May 20, 1931, but in their own right; and that said Trustees were required by the statute under which bonds of Everglades Drainage District were issued to pay in cash immediately the amount for which [fol. 70] the lands were bid off to them; and to pay in cash the subsequent drainage taxes thereon as the same should become due, and that the obligation of said Trustees to pay in cash for tax sales certificates and to pay in cash the subsequent drainage taxes on lands represented thereby, constitutes a part of the bond contract.

3. That this court determine that the Trustees of the Internal Improvement Fund of the State of Florida, so long as bonds of Everglades Drainage District heretofore issued are outstanding, were and are required by the statute, which statute constitutes a part of the bond contract under which said bonds were issued, to purchase the property offered for sale by the tax collectors for non-payment of drainage taxes and not bid in by other purchasers.

4. That this court make an order enjoining and restraining the defendant Trustees of the Internal Improvement Fund of the State of Florida from transferring to the de-

defendant Board of Commissioners of Everglades Drainage District any tax sales certificates bid off to the defendant Trustees of the Internal Improvement Fund and from conveying to said Board of Commissioners any lands represented by such tax sales certificates, and enjoining and restraining the defendant Board of Commissioners from accepting the transfer of such tax sales certificates or the conveyance of the lands represented thereby, and in the event any such tax sales certificates have been so transferred that this court make an order directing and requiring the defendant Board of Commissioners to re-transfer the same to the Trustees of the Internal Improvement Fund of the State of Florida and re-convey to said Trustees the lands represented thereby so far as any conveyance has been made.

5. That this court make an order enjoining and restraining the defendant Board of Commissioners, and the members thereof, from selling any tax sales certificates or the lands represented thereby which have been transferred to said Board by the Trustees of the Internal Improvement Fund of the State of Florida, or which may hereafter be [fol. 71] transferred, and also enjoining and restraining the said Board of Commissioners from selling any tax sales certificates and the lands represented thereby which may be bid off to the said Board of Commissioners by tax collectors under the provisions of the 1929 statute or said Act of May 20, 1931, and enter an order directing the said Board of Commissioners to transfer to the Trustees of the Internal Improvement Fund any and all tax sales certificates representing lands bid off to said Commissioners by tax collectors and to re-convey any and all lands represented thereby.

6. That this court make an order enjoining and restraining the defendant Board of Commissioners from permitting any tax sales certificates or lands represented thereby, while in the possession or under the control of said Board, from being redeemed under the provisions of said Act of May 20, 1931, and that the defendant Clerks of the Circuit Courts of the various counties which include any lands of Everglades Drainage District may be enjoined and restrained from accepting any bonds or interest coupons or anything other than money in the redemption

of any tax sales certificates heretofore issued for the non-payment of drainage taxes and in the redemption of any lands that may be sold for the non-payment of any taxes.

7. That this court make and enter an order enjoining and restraining the defendant Board of Commissioners of Everglades Drainage District and the members thereof from issuing any bonds for the purpose of refunding obligations under the provisions of the said Act of May 20, 1931.

8. That this court make an order enjoining and restraining the defendant Board of Commissioners of Everglades Drainage District from making or delivering any certificates of indebtedness to the Trustees of the Internal Improvement Fund under the provisions of the said Act of May 20, 1931, and enjoining and restraining the defendant Trustees of the Internal Improvement Fund of the State of Florida from receiving or accepting any such certificates of indebtedness; that this court make an order enjoining and restraining the defendant Trustees of the Internal Improvement Fund of the State of Florida from disposing of any of the property held by them as such Trustees, or of the income therefrom, except in accordance with the powers and duties imposed upon them by the statutes in force at the time the bonds of the defendant Board of Commissioners of Everglades Drainage District now outstanding were issued, and directing and commanding the said Trustees to pay to the said Board all amounts due from the Trustees of the Internal Improvement Fund of the State of Florida for tax sales certificates and the lands represented thereby bid off to the said Trustees by the tax collectors of the various counties, and all subsequent drainage taxes due thereon. In the event said Trustees fail to pay in full the amounts due on such tax sales certificates and subsequent taxes which have accrued on lands represented thereby on the ground that the property of the said Trustees is not sufficient for that purpose, then this court shall make an order commanding and directing the said Trustees of the Internal Improvement Fund of the State of Florida to render to this court a true and proper accounting of all property of every kind owned by said Trustees or which they have a right to own or control, all sums of money due to said

Trustees from every source and all sums of money that may become due thereon under existing contracts.

9. That this court will be pleased to order, adjudge and decree that the said Act of May 20, 1931 impairs the obligation of the contract under which the bonds of Everglades Drainage District now outstanding were issued and that said Act is void as against the plaintiffs and other holders of said bonds.

10. That the process of this court may issue out of and under the seal of this court, returnable as required by law, directed to and for service upon the defendants, T. W. Weeks as a member of the defendant Board; Doyle E. Carlton as Governor of the State of Florida, Ernest Amos [fol. 73] as Comptroller of the State of Florida, W. V. Knott as Treasurer of the State of Florida, Cary D. Landis as Attorney General of the State of Florida, and Nathan Mayo as Commissioner of Agriculture of the State of Florida, as and constituting the Trustees of the Internal Improvement Fund of the State of Florida; Ross C. Sawyer as Clerk of the Circuit Court of Monroe County, Florida; E. B. Leatherman as Clerk of the Circuit Court of Dade County, Florida; Frank A. Bryan as Clerk of the Circuit Court of Broward County, Florida; Fred A. Fenno as Clerk of the Circuit Court of Palm Beach County, Florida; J. R. Pomeroy as Clerk of the Circuit Court of Martin County, Florida; P. C. Eldred as Clerk of the Circuit Court of St. Lucie County, Florida; L. T. Farmer as Clerk of the Circuit Court of Highlands County, Florida; Doris S. Weeks as Clerk of the Circuit Court of Glades County, Florida; William T. Hull as Clerk of the Circuit Court of Hendry County, Florida; Josh L. Barker as Clerk of the Circuit Court of Okeechobee County, Florida; and E. W. Russell as Clerk of the Circuit Court of Collier County, Florida, commanding them, and each of them, upon a day therein to be named to make full, true and perfect answer unto this supplemental bill of complaint and the original bill of complaint (answer under oath being waived), and that the defendants to the said original bill of complaint may be required to make answer hereto (but not under oath, oath to their answers being waived) without further service of process; and further that the defendants stand to, abide by and perform such other and

further orders and decrees, general or special, temporary or final, in the premises as equity may require.

(S.) Wm. Roberts, (S.) Watson & Pasco & Brown,
Solicitors for Complainants.

[fol. 74] IN UNITED STATES DISTRICT COURT

AMENDMENTS TO PRAYERS OF BILL OF COMPLAINT AND
SUPPLEMENTAL BILL OF COMPLAINT—Filed November 5,
1931

Now come the complainants and by leave of the court first had and obtained amend the prayers of the original and supplemental bills of complaint in the following particulars, to-wit:

1. They amend paragraph 3 of the prayer of the original bill of complaint to read as follows:

"3. That pending the final determination of this cause a preliminary restraining order and interlocutory injunction issue herein, restraining and enjoining W. V. Knott, the Treasurer of the State of Florida, as custodian of the funds of said Everglades Drainage District and of said Board of Commissioners of Everglades Drainage District, from disbursing or applying any of such funds now in his possession of which he may hereafter receive, until the further order of this court, except to the payment of the principal and interest of the bonds of the District which fell due on January 1, 1931 and to the principal and interest of the bonds which will fall due semi-annually thereafter, and to the payment of the sinking fund provided for in the statute at the rate of two percent per annum on the principal amount of the bonds outstanding, and that upon final hearing such restraining order and injunction be made perpetual, and that the said W. V. Knott, Treasurer and custodian, be required by decree of this court at all times when any of the bonds mentioned in this bill are in default, or any coupons past due, to apply solely to the payment thereof the funds of said Board and District in his hands until all past due interest and principal shall have been paid before applying any of such funds to any other purpose."

2. The Complainants amend paragraph 4 of the prayer of the original bill of complaint to read as follows:

"4. That pending the final determination of this cause a preliminary restraining order and interlocutory injunction issue herein restraining the Board of Commissioners of Everglades Drainage District from preparing and forwarding to the tax assessors of the respective counties in which lands of the District lie, tax lists for the year 1931 and any subsequent years, unless such tax lists shall include all the lands of Everglades Drainage District lying [fol. 75] in the particular county on which taxes are imposed by the statute, and also include drainage taxes on all such lands at the rate set forth in the statute and in paragraph 11 of this bill of complaint, and that upon final hearing said injunction be made perpetual, and the said Board be required annually to make up and forward to the tax assessors of the respective counties in which lands of the district lie, tax lists including all the lands of Everglades Drainage District lying in the particular county on which such taxes are imposed by statute, and to include in such list the drainage taxes on all such lands at the rate set forth in the statutes in force at the time of the enactment of Chapter 13633 of the Acts of 1929; and that the said Chapter 13633 of the Acts of 1929 be adjudged and decreed to be void and in violation of the rights of the complainants and of all other holders of bonds of said Everglades Drainage District.

3. They amend paragraph 4 of the prayer of the supplemental bill of complaint to read as follows:

"4. That pending the final determination of this cause a preliminary restraining order and interlocutory injunction issue herein restraining the defendant Trustees of the Internal Improvement Fund of the State of Florida from transferring to the defendant Board of Commissioners of Everglades Drainage District any tax sales certificates bid off to the defendant Trustees of the Internal Improvement Fund and from conveying to said Board of Commissioners any lands represented by such tax sales certificates, and enjoining and restraining the defendant Board of Commissioners from Accepting the transfer of such tax certificates or the conveyance of the lands repre-

sented thereby, and that upon final hearing said injunction be made perpetual; and in the event any such tax sales certificates have been so transferred that this court do make an order directing and requiring the defendant Board of Commissioners to re-transfer the same to the Trustees of the Internal Improvement Fund of the State of Florida, and re-convey to said Trustees the lands represented thereby so far as any conveyance may have been made.

4. They amend paragraphs 5, 6, 7, 8 and 9 of said supplemental bill of complaint to read as below written:

"5. That pending the final determination of this cause a preliminary restraining order and interlocutory injunction issue herein restraining the defendant Board of Commissioners and the members thereof from selling any tax sales certificates or the lands thereby represented which have been transferred to said Board by the Trustees of the Internal Improvement Fund of the State of Florida, or which may hereafter be transferred, and also enjoining and [fol. 76] restraining said Board of Commissioners from selling any tax sales certificates and the lands represented thereby which may have been or may be bid off to the said Board of Commissioners by tax collectors under the provisions of said Chapter 13633 of the Acts of 1929, or under the provisions of the said Act of May 20, 1931, and that upon final hearing said injunction be made perpetual, and that this court do enter an order directing the said Board of Commissioners to transfer to the Trustees of the Internal Improvement Fund any and all tax sales certificates representing lands bid off to said Commissioners by tax collectors, and to convey to said Trustees any and all lands represented thereby."

"6. That pending the final determination of this cause a preliminary restraining order and interlocutory injunction issue herein restraining the defendant Board of Commissioners from selling any tax sales certificates or lands represented thereby and from permitting any such tax sales certificates, while in the possession or under the control of the said Board, from being redeemed under the provisions of the said Act of May 20, 1931, and restraining the defendant clerks of the circuit courts of the various counties which include any lands of Everglades Drainage District from accepting any bonds or interest coupons or

anything other than money in the redemption of any tax sales certificates heretofore or hereafter issued for the non-payment of drainage taxes, and in the redemption of any lands that may be sold for non-payment of any taxes, and that upon final hearing the said injunction be made perpetual.

"7. That pending the final determination of this cause a preliminary restraining order and interlocutory injunction issue herein restraining the defendant Board of Commissioners of Everglades Drainage District and the members thereof from issuing any bonds for the purpose of refunding obligations under the provisions of the said Act of May 20, 1931, and that upon final hearing said injunction be made perpetual."

"8. That pending the final determination of this cause, preliminary restraining order and interlocutory injunction issue herein restraining the defendant Board of Commissioners of Everglades Drainage District and the members thereof from making or delivering any certificates of indebtedness to the Trustees of the Internal Improvement Fund under the provisions of the said Act of May 20, 1931, and enjoining and restraining the defendant Trustees of the Internal Improvement Fund of the State of Florida from receiving or accepting any such certificates of indebtedness; and restraining said defendant Trustees of the Internal Improvement Fund of the State of Florida from disposing of any of the property held by them as such Trustees, or of the income therefrom; except in accordance with the powers and duties imposed upon them by the statutes in force at the time the bonds of the defendant [fol. 77] Board of Commissioners of Everglades Drainage District now outstanding were issued, and that upon final hearing such injunction or injunctions be made perpetual. And that by order of this court said Trustees be directed and required to pay to the Treasurer of the State of Florida, as custodian of the funds of said Board of Commissioners, all amounts due from the Trustees of the Internal Improvement Fund of the State of Florida for tax sales certificates and the lands represented thereby, bid off to the said Trustees by the tax collectors of the various counties, including any tax sales certificates transferred to the said Trustees by the said Board in obedience to any order of this court,

and all subsequent drainage taxes due on the lands included in such certificates. In the event the said Trustees fail to pay in full the amounts due on such tax sales certificates and subsequent taxes which have accrued on lands represented thereby on the ground that the property of the said Trustees is not sufficient for that purpose, that then this court shall make an order commanding and directing the said Trustees of the Internal Improvement Fund of the State of Florida to render to this court a true and proper accounting of all property of every kind owned by said Trustees or which they have a right to own or control, and all sums of money due to said Trustees from every source and all sums of money that may become due thereon under any existing contracts, and that this court will make such orders and decrees as may be appropriate to secure the payment from the said property and assets of the said Trustees of all sums which said Trustees ought lawfully to pay on account of any taxes levied to raise the moneys to pay off the bonds and interest coupons held by the complainants.

"9. That this court will be pleased to order, adjudge and decree that the said Chapter 13633 of the Acts of 1929 and the said Act of May 20, 1931, impair the obligation of the contract under which the bonds of Everglades Drainage District now outstanding were issued, and that said Acts are void as against the complainants and other holders of said bonds and interest coupons for interest thereon, and that pending the final determination of this cause preliminary restraining order and interlocutory injunction issue herein restraining the Board of Commissioners of Everglades Drainage District from pledging the funds of said District to the payment of any indebtedness so long as any of the bonds mentioned in the original bill of complaint and this supplemental bill of complaint, and interest coupons thereon, shall be outstanding and unpaid, and that upon final hearing such injunction be made perpetual."

(S) William Roberts, (S) Watson & Pasco & Brown,
Solicitors for Complainants.

[fol. 78] IN UNITED STATES DISTRICT COURT

AMENDMENT TO PRAYER OF SUPPLEMENTAL BILL—Filed
January 16, 1932

Now come the complainants and by leave of the court first had and obtained, further amend the prayer of the supplemental bill of complaint, as amended, by making paragraph 8 thereof read as follows:

"8. That pending the final determination of this cause a preliminary restraining order and interlocutory injunction issue herein restraining the defendant Board of Commissioners of Everglades Drainage District and the members thereof from making or delivering any certificates of indebtedness to the Trustees of the Internal Improvement Fund under the provisions of the said Act of May 20, 1931, and enjoining and restraining the defendant Trustees of the Internal Improvement Fund of the State of Florida from receiving or accepting any such certificates of indebtedness, and if at the time of any hearing hereon such certificates of indebtedness shall have been issued, that said Board of Commissioners of Everglades Drainage District be restrained from receiving or permitting to be received any of such certificates of indebtedness, or any other obligations of said District, in payment of any of the drainage taxes levied or to be levied in said Everglades Drainage District, and enjoining and restraining the said Trustees of the Internal Improvement Fund of the State of Florida from negotiating such certificates of indebtedness and from using or permitting the use thereof in the payment of any drainage taxes on any of the lands in said Everglades Drainage District, and from paying any such drainage taxes now or hereafter levied which said Trustees may be liable to pay, in any obligations of said District or in anything other than cash; and restraining said defendant Trustees of the Internal Improvement Fund of the State of Florida from disposing of any of the property held by them as such Trustees, or of the income therefrom, except in accordance with the powers and duties imposed upon them by the statutes in force at the time the bonds of the defendant Board of Commissioners of Everglades Drainage District now outstanding were issued, and that upon final hearing such injunction or injunctions be made perpetual.

And that by order of this court said Trustee be directed and required to pay to the Treasurer of the State of Florida, as custodian of the funds of said Board of Commissioners, all amounts due from the Trustees of the Internal Improvement Fund of the State of Florida for tax sales certificates and the lands represented thereby, bid off to the said Trustees by the tax collectors of the various counties, including any tax sales certificates transferred to the said Trustees by the said Board in obedience to any order of this court, and all subsequent drainage taxes due on the lands included in such certificates. In the event the said Trustees fail to pay in full the amounts due on such tax sales certificates and subsequent taxes which have accrued on lands represented thereby on the ground that the property of the said Trustees is not sufficient for that purpose, that then this [fol. 79] court shall make an order commanding and directing the said Trustees of the Internal Improvement Fund of the State of Florida to render to this court a true and proper accounting of all property of every kind owned by said Trustees or which they have a right to own or control, and all sums of money due to said Trustees from every source and all sums of money that may become due thereon under any existing contracts, and that this court will make such orders and decrees as may be appropriate to secure the payment from the said property and assets of the said Trustees of all sums which said Trustees ought lawfully to pay on account of any taxes levied to raise the moneys to pay off the bonds and interest coupons held by the complainants."

(S) Wm. Roberts, (S) Watson & Pasco & Brown,
Solicitors for Complainants.

[fol. 80] IN UNITED STATES DISTRICT COURT

ORDER CALLING THREE-JUDGE COURT TO HEAR PETITION FOR
INTERLOCUTORY INJUNCTION—Filed November 14, 1931

The complainants having presented their application to the Court for the issuance of an interlocutory injunction or injunctions as prayed for in and by the bill of complaint and supplemental bill of complaint as amended, and for hearing thereon before three Judges as required by Section 266 of

the Judicial Code as amended, being Section 380, Title 28, of the United States Code;

It is Ordered that the defendants appear before the Judge of this District Court of the United States for the Northern District of Florida, and a Judge of the Circuit Court of the United States and another District Judge of the United States, sitting to hear said application, on the 30th day of November, 1931, at ten o'clock A. M., at the court room of the Circuit Court of Appeals of the United States at New Orleans, La., and then and there show cause, if any they have, why the interlocutory injunction or injunctions prayed for in the bill of complaint and supplemental bill of complaint as amended should not issue.

It is Further Ordered that not less than five (5) days notice of the hearing above provided for shall be given to the Governor and to the Attorney General of the State of Florida, and to the other defendants in this cause, and that service of notice of the hearing on defendants other than the Governor and Attorney General of the State of Florida, shall be sufficient if made upon any of the solicitors of record for said other defendants; and that the hearing of this cause be had and proceeded with in accordance with said Section 266 of the Judicial Code of the United States as amended, being Section 380, Title 28, of the United States Code.

[fol. 81] Dated at Pensacola, Florida, in the Northern District of Florida, this the 14th day of November, 1931.

Wm. B. Sheppard, Judge of the United States District Court for the Northern District of Florida.

IN UNITED STATES DISTRICT COURT

ORDER CALLING IN ADDITIONAL JUDGES—Filed November 14,
1931

In the above styled and entitled cause, in which application for interlocutory injunctions as prayed for in the bill of complaint and supplemental bill of complaint has been made.

It is Ordered that there is hereby called to the assistance of the undersigned District Judge to hear and determine the said application, Honorable Nathan P. Bryan, United States Circuit Judge, and Honorable Wayne G. Borah, United States District Judge.

Dated at Pensacola, Florida, in the Northern District of Florida, this the 14th day of November, 1931.

Wm. B. Sheppard, Judge United States District Court for the Northern District of Florida.

IN UNITED STATES DISTRICT COURT

AMENDMENT TO ORDER—Filed January 16, 1932

The order of November 14, 1931, in this cause entered, calling to the assistance of the undersigned District Judge other judges to hear and determine application of the complainants, is amended to read as follows:

“In the above styled and entitled cause, in which application for interlocutory injunction as prayed for in the bill of complaint and supplemental bill of complaint has been made,

It is Ordered that there is hereby called to the assistance [fol. 82] of the undersigned District Judge to hear and determine the said application, Honorable Nathan P. Bryan, United States Circuit Judge, and Honorable Louie W. Strum, United States District Judge.”

Dated at Tallahassee, Florida, in the Northern District of Florida, this 12th day of January, 1932.

Wm. B. Sheppard, United States District Judge for the Northern District of Florida.

IN UNITED STATES DISTRICT COURT

PETITION FOR INTERLOCUTORY INJUNCTION—Filed November 14, 1931

Now come the complainants and show to the court that this is a cause to restrain the action of officers of the State of Florida in the enforcement and execution of certain statutes specifically mentioned in the bill of complaint and supplemental bill of complaint, attacking the constitutionality of such statutes as impairing the obligations of contracts and otherwise being in violation of the rights of bondholders of Everglades Drainage District. The complainants now file this their motion and application for the

f

issuance of an interlocutory injunction or injunctions as prayed for in and by the bill of complaint and supplemental bill of complaint as amended, and on the grounds set forth in such bill of complaint and supplemental bill of complaint.

The complainants further make this their application to this court for a hearing in this cause on their application for interlocutory injunction as required by Section 266 of the Judicial Code as amended, being Section 380, Title 28, United States Code, and that the United States District Judge for the Northern District of Florida shall immediately call to his assistance to hear and determine the application [fol. 83] cation two other judges as required by the Section 380.

This 12th day of November, 1931.

William Roberts, Watson, Pasco & Brown, Solicitors
for Complainants.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING TEMPORARY RESTRAINING ORDER AND POSTPONING HEARING FOR INTERLOCUTORY INJUNCTION—Filed November 25, 1931

The defendants having applied for a postponement of the hearing on the application of the complainants for interlocutory injunction, to hear which the undersigned Judge has called to his assistance a Circuit Judge and a United States District Judge, and the Court being of the opinion that said postponement should be granted, but upon condition that the status quo be maintained by a temporary restraining order as herein provided, to remain in force until the hearing and determination of the said application for interlocutory injunction:

It is Ordered and Decreed that said hearing be and it is hereby postponed from ten o'clock November 30, 1931 to ten o'clock A. M. January 16, 1932, to be held at the same place as provided in the original order herein, and that until the hearing and determination of said application for interlocutory injunction:

(a) The Treasurer of the State of Florida, as custodian of the funds of Everglades Drainage District, the Board of Commissioners of Everglades Drainage District and the de-

fendant members thereof, be and they are hereby restrained from applying or paying any moneys of said District or Board for any cause, purpose or liability whatsoever except the actual necessary operation expenses of said Everglades Drainage District.

[fol. 84] (b) That the defendant Trustees of the Internal Improvement Fund be and are hereby restrained from using any certificates of indebtedness issued to them by the Board of Commissioners of Everglades Drainage District under the provisions of Chapter 14717 in the payment of any taxes on lands in said District, and the defendant Board of Commissioners of Everglades Drainage District and the members thereof be and are hereby restrained from receiving any of said certificates of indebtedness in payment of any of the drainage taxes on lands in said Everglades Drainage District.

(c) That the defendant Board of Commissioners of Everglades Drainage District and the members thereof and the defendant clerks of the circuit courts be and are hereby restrained from receiving in redemption of any tax certificates transferred to the said Board by the Trustees of the Internal Improvement Fund of the State of Florida, any bonds or interest coupons or anything other than lawful money of the United States.

Done and Ordered this 25th day of November, 1931.

William B. Sheppard, United States District Judge.

IN UNITED STATES DISTRICT COURT

ACKNOWLEDGEMENT OF THE ATTORNEY GENERAL OF FLORIDA
OF DUE NOTICE OF HEARING—Filed January 16, 1932

In the above styled and entitled *styled and entitled* cause it is acknowledged that due and timely notice of the hearing on the application of the complainants for interlocutory injunction was served on the Governor of the State of Florida and the Attorney General thereof.

This January 16, 1932.

Cary D. Landis, Attorney General of the State of Florida.

[fol. 85] IN UNITED STATES DISTRICT COURT

ORDER GRANTING INTERLOCUTORY INJUNCTION—Filed September 17, 1932

This cause; after due and legal notice, came on to be heard before Honorable Nathan P. Bryan, Circuit Judge, Honorable Louie W. Strum and Honorable Wm. B. Sheppard, District Judges, on the application of the complainants for interlocutory restraining orders and injunctions as prayed in and by the bill of complaint, the supplemental bill of complaint and amendments to such bill and supplemental bill, and was argued by counsel for the respective parties and opinion and dissenting opinion on the questions involved herein were heretofore duly filed.

Now in accordance with said opinion, and for the reasons therein given holding unconstitutional as against the complainants certain statutory provisions attacked in the bill of complaint, it is ordered, adjudged and decreed that the application of the complainants for interlocutory injunction be and it is hereby granted, to the extent herein defined, and that until the further order of this court the defendants be enjoined and restrained to the extent following, to-wit:

1. That pending the final determination of this cause W. V. Knott, Treasurer of the State of Florida, as custodian of the funds of Everglades Drainage District and of the Board of Commissioners of Everglades Drainage District, be and he is hereby enjoined and restrained from disbursing or applying any moneys and funds in his possession, or which he may hereafter receive, belonging to said Board or said Drainage District, except to the payment of the principal and interest of the bonds of the said District which fell due on January 1, 1931, and to the principal and interest of the bonds of said District thereafter falling due, and to the payment into the sinking fund of the amounts provided by the statutes of Florida, and the resolutions of the defendant Board under which such bonds were issued, for the payment of the principal of said bonds, and that he be and is hereby enjoined and restrained from applying said funds and money to any other purpose so long as any of said bonds or any interest thereon shall be past due or any payments required to be made into said sinking fund have

not been made. Nothing herein, however, shall operate to restrain the disbursement by said W. V. Knott in accordance with the provisions of said Chapter 8412, Acts of 1921, Laws of Florida, of the proceeds of the maintenance tax levied under the provisions of said Chapter 8412.

2. That pending the final determination of this cause the Board of Commissioners of Everglades Drainage District and the members thereof are enjoined and restrained from preparing and forwarding to the tax assessors of the respective counties in which lands of said district lie tax lists for any year, unless such tax lists shall include all the lands of Everglades Drainage District lying in the particular county on which taxes are imposed by the statute, and shall include drainage taxes on all such lands at not less than the rates specified in Chapter 9119, Acts of 1923, Laws of Florida.

3. That pending the final determination of this cause the Trustees of the Internal Improvement Fund of the State of Florida be and they are hereby enjoined and restrained from transferring to the Board of Commissioners of Everglades Drainage District under the provisions of Section 65 (a) and 65 (b) of Chap. 14717, Laws of Florida any tax sales certificates of lands in Everglades Drainage District bid off to the defendant Trustees of the Internal Improvement Fund of the State of Florida, and from conveying to said Board of Commissioners of Everglades Drainage District any lands represented by such tax sales certificates, and the defendant Board of Commissioners of Everglades Drainage [fol. 87] District and the members thereof are hereby enjoined and restrained from accepting the transfer of such tax certificates or the conveyance of any lands represented thereby. And pending the final determination of this cause the defendant Board of Commissioners of Everglades Drainage District and the members thereof are enjoined and restrained from making any disposition of tax sales certificates that may have been assigned to them by the Trustees of the Internal Improvement Fund of the State of Florida, under the provisions of the Act of May 20, 1931, being Chapter 14717, Laws of Florida, Acts of 1931, other than to re-transfer such certificates to the Trustees of the Internal Improvement Fund of the State of Florida, and that the Trustees of the Internal Improvement Fund of the State of Florida are enjoined and restrained from making any dis-

position of certificates issued to them by the Board of Commissioners of Everglades Drainage District under the provisions of the last mentioned statute other than to return such certificates of indebtedness to said Board of Commissioners of Everglades Drainage District.

4. That pending the final determination of this cause the defendant Board of Commissioners of Everglades Drainage District and the members thereof are enjoined and restrained from selling any tax sales certificates or the lands represented thereby which may under the provisions of the Act of May 20, 1931, being Chapter 14717, Laws of Florida, Acts of 1931, have been transferred to said Board of Commissioners of Everglades Drainage District by the Trustees of the Internal Improvement Fund of the State of Florida, and said Board of Commissioners of Everglades Drainage District are hereby enjoined and restrained from selling any tax sales certificates or the lands represented thereby which may have been bid off to said Board of Commissioners of Everglades Drainage District by tax collectors under the [fol. 88] provisions of Chapter 13633, Laws of Florida, Acts of 1929, or under the provisions of the Act of 1931, and the said Board of Commissioners are hereby enjoined and restrained from receiving any further tax certificates under the provisions of either of the said last mentioned Acts.

5. That pending the final determination of this cause the defendant Board of Commissioners of Everglades Drainage District and the members thereof be and they are hereby enjoined from selling any tax sales certificates or lands represented thereby, and from permitting any such tax sales certificates while in the possession or under the control of the said defendant Board or the members thereof from being redeemed under the provisions of the said Act of May 20, 1931, being Chapter 14717, Laws of Florida, Acts of 1931, and several defendants who are clerks of the circuit courts of the various counties which include any lands of said Everglades Drainage District are enjoined and restrained from accepting any bonds or interest coupons of the said District in the redemption of any tax sales certificates heretofore or hereafter issued for the non-payment of drainage taxes imposed on lands of said Everglades Drainage District.

6. That pending the final determination of this cause the defendant Board of Commissioners of Everglades Drainage District and the members thereof are enjoined and restrained from issuing any bonds for the purpose of refunding obligations of said District under the provisions of the Act of May 20, 1931, being Chapter 14717, Laws of Florida, Acts of 1931, other than bonds issued pursuant to Chap. 6456, Laws of Florida, and its amendments.

7. That pending the final determination of this cause the defendant Board of Commissioners of Everglades Drainage District and the members thereof are enjoined and restrained from making or delivering any certificates of indebtedness to the Trustees of the Internal Improvement Fund of the State of Florida under the provisions of Sec. 65 (b) of the Act of May 20, 1931, being Chapter 14717, Laws [fol. 89] of Florida, Acts of 1931, and the defendant Trustees of the Internal Improvement Fund of the State of Florida be and they are hereby enjoined from receiving or accepting any such certificates of indebtedness or making any disposition thereof in accordance with the provisions of the said last mentioned Act.

8. That pending final determination of this cause the defendant Board of Commissioners of Everglades Drainage District and the members thereof are hereby enjoined and restrained from pledging the funds of said Everglades Drainage District to the payment of any indebtedness and from carrying out any pledge of such funds attempted to be made by the Act of May 20, 1931, being Chapter 14717, Laws of Florida, Acts of 1931, so long as any of the bonds mentioned in the original bill of complaint and supplemental bill of complaint in this cause and the interest coupons thereon shall be outstanding and unpaid.

9. This order shall become effective upon the complainants giving bond to the defendant Board of Commissioners of Everglades Drainage District, the defendant Trustees of the Internal Improvement Fund of the State of Florida, and the defendant clerks of the circuit courts in the penal sum of Fifty thousand dollars, with surety to be approved by the clerk of this court, conditioned for the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongly enjoined or restrained hereby.

10. It is further ordered that this cause do proceed as usual in equity.

Done and Ordered this 6th day of September, 1932.

N. P. Bryan, United States Circuit Judge. Wm. B. Sheppard, United States District Judge. Louie W. Strum, United States District Judge.

[fol. 90] IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTIONS TO DISMISS—Filed September 17, 1932

The above styled and entitled cause having been submitted on the motion of the defendant Trustees of the Internal Improvement Fund to dismiss the original and supplemental bill, on the motion of the defendant Clerks of the Circuit Courts to dismiss the bill and the supplemental bill of complaint, the motion of the defendant Board of Commissioners and the members thereof to dismiss the bill of complaint as amended and portions thereof, the motion of T. W. Weeks as and constituting a member of the Board of Commissioners of Everglades Drainage District joining in and adopting the motion to dismiss the supplemental bill filed by the Board of Commissioners of Everglades Drainage District, and the individual members thereof, the motion of the defendant members of the Board of Commissioners of Everglades Drainage District under the Act of 1929 but not under the Act of 1931 to dismiss the bill of complaint as amended, and the motion to dismiss the supplemental bill filed by the Board of Commissioners of Everglades Drainage District, and it appearing that the complainants have made and pressed their application for an interlocutory injunction in this cause, and that the said several motions should be denied and overruled,

It is, Therefore, Ordered, Adjudged and Decreed that the said several motions above mentioned be and they are hereby denied and overruled, and the defendants be and they are allowed until the 15th day of October, 1932, in which to answer the original and supplemental bills of complaint in this cause.

Done and Ordered this 6th day of September, 1932

N. P. Bryan, United States Circuit Judge. Wm. B. Sheppard, United States District Judge. Louie W. Strum, United States District Judge.

[fol. 91] IN UNITED STATES DISTRICT COURT

Suit in Equity for Injunctive Relief

William Roberts, of New York City, and Watson, Pasco & Brown, of Pensacola, for plaintiffs.

Evans & Mershor, of Miami, George C. Bedell, of Jacksonville, Carter & Young, of Pensacola, and H. E. Carter, Assistant Attorney General, and Marvin C. McIntosh, of Tallahassee, for defendants.

Before Bryan, Circuit Judge, and Sheppard and Strum,
District Judges

OPINION—Filed April 13, 1932

STRUM, District Judge:

This is a suit in equity in which bondholders of Everglades Drainage District seek injunctive relief against the Board of Commissioners of said District, the Trustees of the Internal Improvement Fund of Florida, and other officers, to restrain the effectuation by those officers of parts of Chapter 13633, Laws of Florida, Acts of 1929, and parts of Chapter 14717, Acts of 1931, which plaintiffs assail as impairing the obligation of their bond contracts, contrary to the United States Constitution, Art. 1, Sec. 10, and as denying them due process and equal protection contrary to the 14th Amendment.

Pursuant to the Act of Congress of September 4, 1841 (43 U. S. C. A. 857), Florida received 500,000 acres of land for internal improvements upon her admission to the Union, March 3, 1845. Pursuant to the Swamp Lands Act of September 28, 1850 (43 U. S. C. A. 982-984) Florida has received patents to more than twenty million acres of swamp and overflowed lands. The grant of lands under the latter act was subject to the proviso that such lands, and their [fol. 92] proceeds, should be exclusively applied as far as necessary to the reclamation thereof by means of levees and drains.

By Chap. 610, Laws of Florida, approved June 6, 1855, the unsold portions of the internal improvement lands above mentioned, and the swamp and overflowed lands patented under the Act of 1850, together with the proceeds of prior

sales thereof, were constituted a separate fund known as the Internal Improvement Fund. The Governor and four other State Officers were thereby constituted and are still ex-officio statutory Trustees of the Fund, in whom title to those lands is vested until sold or conveyed under legislative authority.

By Chap. 610, Acts of 1855, these Trustees are charged with the duty, pursuant to the proviso of the Congressional Act of 1850, to make such arrangements for the drainage of the lands as is most advantageous to the Fund and the settlement and cultivation of the lands. They have authority to sell and convey the lands, and it is their duty to apply the proceeds to the purposes of the Fund as may be provided by law. Chap. 610, supra, is still in force. See Secs. 1384, et seq., and Secs. 1401, 1408, C. G. L. Fla. 1927; Trustees v. Root, 58 So. 371; Trustees v. Root, 51 So. 535.

Pursuant to the Swamp Lands Act of 1850, supra, one patent known as Everglades Patent No. 137 (Hardee v. Horton, 108 So. 189, 191) was issued to the State of Florida, granting unsurveyed swamp lands of an estimated area of nearly three million acres, which lands became a part of the I. I. Fund under Chap. 610, supra, and subject to the statutory uses and purpose of that Fund. These lands lie in an integrated area on or contiguous to the shores of Lake Okeechobee, reclamation of which lands presented unusual problems peculiar to the locality.

Reclamation by drainage of these and adjacent lands, some held by the Trustees of the I. I. Fund under Chap. 610, [fol. 93] supra, and some vested in private ownership, was undertaken, pursuant to legislative enactment, as a separate enterprise by establishing the Everglades Drainage District, so that the limited funds available to the Trustees of the I. I. Fund from the sale of the public lands in the Everglades area could be augmented by special assessments upon all lands in the District which were benefitted by the drainage improvements (except school lands, see 112 So. 561), and all revenue anticipated by the issuance of bonds, thus enabling the reclamation work to promptly progress on a scale appropriate to the magnitude of the undertaking.

Following litigation as to earlier legislation, the present Everglades Drainage District was established by Chap. 6456, Acts of 1913 (Secs. 1530 et seq., C. G. L. Fla. 1927), comprising an area of approximately four million acres. Of these, approximately one-fifth are now owned by the

Trustees of the I. I. Fund, the remainder being privately owned (except school lands). The boundaries of the District have been altered and much additional legislation enacted, but the Act of 1913 is the genesis of the present District. See *Martin v. Dade Muck Land Co.*, 116 So. 449, where a comprehensive legislative history of the District to 1927 will be found, prepared for the Supreme Court of Florida by Mr. Justice Whitfield.

Governmental affairs of the District are distinct from the general governmental affairs of the I. I. Fund, as well as from those of the State and the several counties, although management of the affairs of the District was originally imposed, as additional administrative duties, upon the same State officers who were Trustees of the I. I. Fund. Those officers until recently composed the Board of Commissioners of Everglades Drainage District. By Chap. 13633, Acts of 1929, five civilian land owners in the District were added to [fol. 94] the Board, and by Chap. 14717, Acts of 1931, the Board was constituted exclusively of five land owners in the District.

The questions before the Court upon defendants' motions to dismiss the original and supplemental bills of complaint, as amended, and plaintiffs' motion for interlocutory injunction, are whether or not the legislation of 1929 and 1931 here complained of (Chaps. 13633 and 14717, *supra*), as well as official action taken or threatened pursuant to that and prior legislation, impairs the obligation of plaintiffs' bond contracts, in the following respects:

First. By diminishing the tax upon which plaintiffs are entitled to rely for the payment of their bonds.

Second. By relieving the Board of Commissioners of Everglades Drainage District of their alleged obligation to pay annually into the sinking fund for the retirement of the District bonds sufficient funds of the District to pay the annual maturities.

Third. By relieving the Trustees of the I. I. Fund of the obligation claimed to rest upon them under Chap. 7305, Acts of 1917, Sec. 3, to purchase and pay for certificates representing unpaid drainage taxes of the District when there are no other bidders at the tax sales.

Fourth. By authorizing certificates of indebtedness, issued by the Board of Commissioners of Everglades Drain-

age District to the Trustees of the I. I. Fund under Sec. 65 (b) of Chap. 14717, to be used in payment of drainage taxes assessed against the public lands in the District owned by said Trustees.

Fifth. By authorizing the Board of Commissioners of the District to receive bonds and interest coupons of the District in redemption of certain tax certificates issued for unpaid [fol. 95] drainage taxes of the District.

Sixth. By constituting the Board of Commissioners of five civilian members instead of the State officers who originally, and when all now outstanding bonds were issued, composed the Board.

Chap. 6456, supra, establishing the District Secs. 1530 et seq., C. G. L. Fla. 1927), authorizes the Board of Commissioners to construct a system of canals, drains, levees, dykes, etc., and to maintain the same, in such manner as the Board shall deem advantageous to drain and reclaim the lands in the District.

For the purpose of constructing, completing and maintaining those works, that Act (Sec. 5) directly imposed upon the lands in the District a graduated tax on an acreage basis, the land being zoned for that purpose. By numerous amendments (See Sec. 1534, C. G. L. Fla. 1927), the plan of zoning has been altered and the acreage taxes increased from time to time as the bonded debt of the District was increased. Vital changes in this respect were provided in the Acts of 1929 and 1931, supra.

By Chap. 8412, Acts of 1921 (Sec. 1592, C. G. L. Fla. 1927, an annual ad valorem tax of one mill was levied upon all real and personal property in the District "to be known as a maintenance tax and shall be used for maintenance, repairs, upkeep and any other general or necessary purpose of the District."

The lands within the District held by the Trustees of the I. I. Fund are subject to the acreage taxes above mentioned and all other taxes, including, since 1921, maintenance and ad valorem taxes, and the said Trustees of the I. I. Fund, in furtherance of the trust upon which the lands are held, are authorized and empowered to pay the same out of any funds in their possession derived from the sale of lands, or otherwise. (Sec. 5, Chap. 6456, supra, as amended; now [fol. 96] Sec. 1534, C. G. L. 1927.)

Sec. 3 of the Act of 1913, brought forward unaltered as Sec. 1535, C. G. L. 1927, provides that "the proceeds arising from the acreage taxes levied by this Act shall be used by said Board (of Commissioners of Everglades District) in the construction and maintenance of such canals, locks, drains, levees, etc., . . . and 'to' the expenses of the Board in the conduct of said work and in its business generally, and to repay any loans and the interest thereon, and to the creation of a sinking fund for the retirement of the principal of the bonds that the Board may issue under the provision of this Act, and to the payment of interest thereon."

Sec. 19 of the Act of 1913 originally authorized the Board to issue negotiable bonds not exceeding six million dollars outstanding at any time. That section has been amended from time to time to authorize the issuance of not exceeding \$14,250,000.00, exclusive of those authorized (but never issued) by Chap. 12016, Acts of 1927 now repealed. No bonds were issued until the original Sec. 19 was amended by Chap. 6957, Acts of 1915, to provide that "nothing herein contained shall be deemed a limitation of the right of the Legislature to authorize additional bonds of said Board, payable from drainage taxes within said district, provided any such additional authority shall be accompanied by the levy and imposition of additional taxes or assessment sufficient to meet the payment of the bonds authorized and the interest thereon as the same shall become due; such payment to be provided for by a sinking fund as herein required, and such additional bonds shall constitute an obligation of equal dignity with the bonds herein authorized and equally with the bonds herein authorized may be entitled to payment from all drainage taxes then or theretofore imposed upon lands within said district without preference to any bonds or series of bonds over any other [fol. 97] bonds or series of bonds." That section, as so amended, remained in effect at least as late as 1927. (Sec. 1553, C. G. L. 1927.)

As future issues were authorized (See the Acts cited next hereafter); the acreage taxes were increased to provide funds for retirement of the additional bonds. Under original Sec. 19, bonds aggregating \$3,500,000.00 were issued during 1915, 1916 and 1917. These have all been retired in part by payment and in part by refunding bonds issued by authority of Chap. 10027, Acts of 1925.

By authority of successive amendments of original Sec. 19, additional bonds have been issued under Chap. 7862, Acts of 1919, Chap. 8413, Acts of 1921, and Chap. 9119, Acts of 1923, codified as Sec. 1178, R. G. S. Fla. 1920, and Sec. 1553, C. G. L. 1927. Chap. 10026, Acts of 1925, authorized \$3,000,000.00 additional bonds which have never been issued. Chap. 10027, Acts of 1925, authorized the issuance of refunding bonds, which have been issued to the extent of \$3,842,000.00, and used to refund in part the original issues under the Act of 1913, the issues under the Act of 1919, and the issues under the Act of 1923. There are now outstanding \$9,919,000.00, including the refunding bonds.

The original act provides that the "faith and credit" of the Board of Commissioners shall be pledged by said bonds. This provision still remains intact. Sec. 1555, C. G. L. 1927.

Sec. 23 of the Act of 1913, brought forward unaltered as Sec. 1557, C. G. L. 1927, provides, *inter alia*:

"This Article shall without reference to any other act of the Legislature of Florida be full authority for the issuance and sale of the bonds in this Article authorized,
 * * *. The provisions of the Article shall constitute an irrevocable contract between the said board and said Everglades drainage district and the holders of any bonds and the coupons thereof, issued pursuant to the provisions hereof * * *."

Sec. 24 of the Act of 1913, which also has remained in force unaltered, and is now Sec. 1560, C. G. L. 1927, provides:

[fol. 98] "It shall be the duty of the State Treasurer or his successor in office, as custodian of the funds belonging to the said board of commissioners and to the said drainage district, out of the proceeds of the taxes levied and imposed by this Article and out of any other moneys in his possession belonging to the said board or to the said drainage district, which moneys so far as necessary are hereby set apart and appropriated for the purpose, to apply said moneys to pay the interest upon the said bonds as the same shall fall due and at the maturity of the said bonds out of the said moneys to pay the principal thereof, and there shall be and there is hereby created a sinking fund for the payment of the principal of the said bonds, and the said board shall set apart and pay into such sinking fund annually out of the taxes levied and

imposed by this Article, and the other revenue and funds of the said district, at least two per cent of the amount of bonds outstanding. The said sinking fund for the payment of the principal of said bonds shall not be appropriated to any other purpose than that herein specified."

These provisions apply to all bonds subsequently issued, as all the subsequent authorizing acts are amendments of original Sec. 19 of the Act of 1913 (except the refunding Act of 1925, which amends Sec. 20 of the original Act), and are not unrelated legislation, so that the subsequent amendments became in effect a part of the original act, thus preserving the contract feature thereof just referred to. Until 1927, whenever additional bonds were authorized by amendment to original Sec. 19, such action was accompanied by an amendment of original Sec. 5, or its codification (Sec. 1164, R.G.S. 1920), which amendments impose additional acreage taxes by increasing the former rates, so as to provide additional funds, as required by original Sec. 19, as amended by Chapter 6957, Acts of 1915, hereinabove quoted.

In the several resolutions pursuant to which each series of bonds were issued, the Board of Commissioners provided for a sinking fund as contemplated by the statute, and further resolved that "there shall in addition be paid into the sinking fund, in time to reasonably pay the principal of said bonds after they mature, the amount of bonds maturing during such years."

Of the \$9,919,000.00 bonds outstanding, the plaintiffs allege that they own "many thousand dollars," and specifically \$51,000.00 principal past due and unpaid, and past due interest coupons of the several issues aggregating approximately \$107,000.00.

These bonds were all issued by the district and acquired by plaintiffs after the enactment of the legislation already referred to embracing the sinking fund provisions; the provisions for additional taxes to meet additional bonds when authorized; the provision that the statute under which the bonds were issued should constitute an irrevocable contract between the Board and holders of the bond and coupons; that all bonds should be of equal dignity and share equally and without prejudice in payment from all drainage taxes then or theretofore imposed; and other statutory provisions to which reference will be made here-

after. See Secs. 1553 and 1557, C.G.L. 1927 (Chap. 6456 (19), Acts of 1913, and Chap. 6957 (10), Acts of 1915), hereinabove quoted.

By Chap. 13711, Acts of 1929, the Florida Legislature established a special tax district, designated as the Okeechobee Flood Control District, for the purpose of controlling the flood waters of Lake Okeechobee, the Caloosahatchee River and vicinity. The original bill of complaint herein alleges that this district as established by the statute is "practically the Everglades Drainage District with some additional territory, and it was created for the purpose of taking over and financing certain improvements which theretofore had fallen within the scope and the powers conferred upon Everglades Drainage District." This act authorizes the issuance of \$3,000,000.00 of bonds and levies acreage taxes upon four defined zones in the district to finance the operation of the district and to retire the bonds. [fol. 100] In 1929 the Florida Legislature also enacted Chap. 13633, relating to the Everglades Drainage District, which act, the bill alleges, was a companion bill with the Okeechobee Flood District bill, Chap. 13711, supra. Chap. 13633, relating to the Everglades Drainage District, enacted that in lieu of all acreage taxes theretofore levied upon the lands in Everglades Drainage District, the acreage taxes prescribed in said Act of 1929 should thereafter be imposed. The bill of complaint charges that the taxes imposed by this act are at substantially lower rates than those imposed by the statutes under which plaintiffs' bonds were issued.

In Sec. 6 of Chap. 13633, it is provided that "there shall be deducted from the taxes hereinabove provided for as to each acre of land within said Everglades Drainage District in each year, an amount equal to the sum of money levied for such year upon such land as an acreage tax under the provisions of An Act of the Legislature of Florida, creating Okeechobee Flood Control District,
 * * *

The last mentioned act (Chap. 13633) further purports to authorize the Board of Commissioners of Everglades Drainage District to reduce the taxes levied by that act in each of the zones proportionately, to the extent of not more than 25 per cent of the levy provided in said act, and to otherwise adjust such levy.

Sec. 26 of the Act of 1929 provides that for the funding and retiring of the obligations of said district not evidenced by bonds, the Everglades Drainage District is authorized to issue \$3,000,000.00 additional bonds. The bill alleges that no additional tax is levied to retire these bonds. Examination of the act disclosed that new rates of acreage taxes were prescribed by Sec. 6 of this Act, which rates appear to be lower than those fixed by Chap. 10026, Acts of 1925, which latter rates plaintiffs claim have become a part of their bond contract.

Certain portions of Chap. 14717, Acts of 1931, are assailed by supplemental bill herein. This act rezones the district for the purpose of levying acreage taxes, and by [fol. 101] Secs. 7 and 8 prescribes new and exclusive rates of acreage taxes, imposing separately a "Debt Service Tax" for the purpose of paying principal and interest of "all obligations (not merely the bond obligations) of Everglades Drainage District heretofore incurred and now outstanding;" and an "administration tax" for the purpose of paying costs of administration, the proceeds of these taxes being placed in separate funds limited to those purposes. These are in addition to an ad valorem tax of one mill for administration purposes (Sec. 8), and a maintenance tax (Sec. 9). The Act purports to authorize the Board (Sec. 43) to borrow against anticipated revenue in the administration and maintenance funds, and to pledge these funds to repay such loans.

Sec. 44 of the Act of 1931 forbids the use of any avails of the taxes imposed by Secs. 7, 8 and 9 for any purpose other than therein prescribed, thereby limiting the participation of bonds in the drainage taxes to that portion of the tax designated as "Debt Service Tax." Sec. 7 of that Act brings into participation of payment out of drainage taxes "all obligations now owing by Everglades Drainage District," but saving (Sec. 44) any existing priorities. It should here be parenthetically observed that the Everglades Drainage District has outstanding large obligations not evidenced by bonds.

The supplemental bill alleges that the rates prescribed in the Acts of 1931, for "Debt Service" are inadequate to meet the bond requirements of the district, and are substantially lower than the former rates, to the continuance of which plaintiffs allege they are entitled. The supplemental bill charges this Act to be a plan to divert acreage

taxes to other purposes, to the impairment of the plaintiffs' vested contract rights under former legislation; and specifically under the sinking fund provisions of Sec. 24 of the Act of 1913. Reference will later be made to other provisions of the 1931 Act, of which plaintiffs also complain.

Legislation by authority of which bonds are issued and their payment provided for becomes a constituent part of [fol. 102] the contract with the bondholders. Such a contract is within the protection of the Constitution, Art. 1, Sec. 10. The obligation of the bond contract, of which such legislation is a part, cannot be impaired, nor its fulfillment hampered or obstructed, by subsequent legislation to the prejudice of the vested rights of bondholders. This rule has reference to subsequent legislation which affects the contract directly, and not incidentally, or only by consequence. *U. S. v. City of Quincy*, 4 Wall. (U. S.) 535, 18 L. Ed. 403; *Louisiana v. McComb*, 92 U. S. 531, 23 L. Ed. 623; *Louisiana v. Pillsbury*, 105 U. S. 278, 26 L. Ed. 1090; *Wolff v. New Orleans*, 103 U. S. 358, 26 L. Ed. 395; *Moore v. Otis*, 275 Fed. 747; *Moore v. Gas Securities Co.*, 278 Fed. 111; *Jenkins v. Entzminger*, 135 So. 785. As was said in *U. S. v. City of Quincy*, supra, "A different result would leave nothing of the contract but an abstract right of no particular value and render the protection of the Constitution a shadow and a delusion."

In addition, Sec. 23 of Chap. 6456, supra, (Sec. 1557, C. G. L. 1927), specifically provides that "this act" (meaning the Everglades Drainage District Act) shall constitute an "irrepealable contract" between the Board of Commissioners and holders of bonds issued under the act. Contracts of this nature have been held impaired by subsequent legislation undertaking to lower the former statutory basis of assessment (*Town of Samson v. Perry*, 17 Fed. (2) 1); or to divert proceeds of assessments from the payment of obligations to pay which they were levied. *Moore v. Otis*, 275 Fed. 747; *Nelson v. Pitts*, 259 Pac. 533.

An impairment occurs when the value of the contract has been diminished by subsequent legislation. The question of impairment is not one of degree, but of encroaching in any respect upon the obligation,—dispensing with any part of its force. *U. S. v. City of Quincy*, 4 Wall. (U. S.) 535; 18 L. Ed. 403; *Green v. Biddle*, 8 Wheat (U. S.) 84; 5 L. Ed. 547; *Minden Bank v. Clement*, 256 U. S. 156; 65 L. Ed. 857; *Farrington v. Tennessee*, 95 U. S. 679, 683;

24 L. Ed. 558, 559; *Planters' Bank v. Sharp*, 6 How. (U. S.) 301; 12 L. Ed. 447.

[fol. 103] It is significant that, until the Act of 1927, the symmetry of the original Act of 1913 was retained, additional bonds having been authorized, and increased acreage taxes levied to pay the same—not by unrelated legislation—but by successive amendments of Secs. 19 and 5 of the original Act, or sections of the Revised General Statutes in which they were codified.

Though the State cannot by contract surrender its sovereign prerogatives in the performance of essential governmental duties (*Contributors v. City of Philadelphia*, 245 U. S. 20; 62 L. Ed. 124),—nevertheless, when the State authorized a taxing subdivision to contract by issuing bonds and to exercise the power of local taxation to the extent necessary to meet such obligations, the power thus given cannot be withdrawn so long as its exercise is necessary to satisfy the vested rights of bondholders. In such cases, the State and the subordinate taxing unit are equally bound. "The power given becomes a trust which the donor cannot annul, and which the donee is bound to execute." *U. S. v. City of Quincy*, 4 Wall. (U. S.) 535; 18 L. Ed. 403; *Louisiana v. McComb*, 92 U. S. 531; 23 L. Ed. 625; *Galena v. U. S.*, 5 Wall. (U. S.) 705; 18 L. Ed. 560; *Mobile v. Watson*, 116 U. S. 289; 29 L. Ed. 620; *Jenkins v. Entzminger*, 135 So. 785; *Nelson v. Police Jury*, 111 U. S. 170; 56 L. Ed. 144; *Rorick v. Board*, 27 Fed. (2) 377.

In *Trustees v. Bailey*, 10 Fla. 112, it was held upon the same principles here under consideration that at the instance of holders of bonds issued under the Internal Improvement Act of Florida of January 6, 1855, the Trustees of said Fund would be enjoined from appropriating any portion of that fund to purposes other than those named in the Act so as to endanger the bondholder's security, even though such other appropriation be commanded by a subsequent act of the Legislature. In that case it is aptly said: "The State is as capable of making a contract as an individual is, and when made is as much bound by it."

The Board of Commissioners here contends that the Legislature may now appropriate a portion of the acreage [fol. 104] taxes to the payment of administration expenses, and to other obligations of the district, as provided in the Acts of 1929 and 1931.

Although Sec. 6 of the Act of 1913 provides in general terms that the proceeds of the acreage taxes levied by Sec. 5 shall be used, amongst other things to pay the "expense" of the Board in "its business generally," that section also provides that such proceeds shall be used to create a sinking fund for the bonds. Sec. 24 of the Act of 1913 specifically and in detail provides that the proceeds of the acreage taxes and any other revenue of the district shall be used to pay interest on the bonds and to create a sinking fund for the retirement of the bonds, and that there shall be paid into this sinking fund annually not less than two per cent of the amount of outstanding bonds. Said funds, so far as necessary for the purpose, are expressly "set apart and appropriated." Appropriation of those moneys for any other purpose is expressly prohibited. The reference to "expenses" in Sec. 6 is general, but the provision for the sinking fund, found in Sec. 24, is specific and mandatory, qualifying pro tanto the general language of Sec. 6. If it be assumed that Sec. 6 invests the Board of Commissioners with authority to use proceeds of the drainage taxes for administration expense or to pay its unbonded obligations, it is clear from the rigid language of Sec. 24 that the Legislature did not intend such authority to be exercised to the prejudice of these specific interest and sinking fund provisions, for which purposes these funds are specifically appropriated and segregated, and the State Treasurer mandatorily and unconditionally directed to apply them. See *People v. Brooks*, 16 Calif. 11, text. 28, 30; 6 R. C. L. 334. Payment of administration or other expenses or obligations out of acreage taxes levied to pay bonds issued under Sec. 19, and its amendments, is limited to the residue of such funds after first meeting the interest and sinking fund requirements.

A similar legislative construction is discernible in the passage in 1921 of Chap. 8412, providing a separate ad valorem tax which "shall be used for maintenance, repairs, [fol. 105] upkeep, and any other general or necessary purpose of the district." This act was passed a little more than five years after the first bonds were sold, when the necessity for substantial maintenance expense was probably first encountered and this additional tax was then provided to meet such expense.

Moreover, the Act of 1913 pledged the "faith and credit" of the district for the payment of the bonds, which in effect,

with bonds payable from the sources here involved, pledges the resources of the district. *Duval Cattle Co. v. Hémphill*, 41 Fed. (2) 433, 438. The Board of Commissioners by resolution, pursuant to which each series of bonds was issued, bound itself unconditionally to pay into the sinking fund sufficient moneys to pay the annual maturities. As the statute fixed only a minimum requirement for the sinking fund, these resolutions were within the Board's authority and are a part of the bond contract.

We hold, therefore, that the provisions of Chap. 6456, Act of 1913, and its several amendments pursuant to which plaintiffs' bonds were issued and acreage taxes to pay the same were levied, constitute a contract between plaintiffs and the district; that the legislation imposing acreage taxes to pay those bonds and interest, which was in effect when the bonds were issued, cannot be withdrawn, nor can the proceeds of such taxes be diverted to other purposes, so long as such proceeds are necessary to pay interest and create a sinking fund as prescribed by Sec. 24 of Chap. 6456, now Sec. 1560, C. G. L. 1927, and the several resolutions of the Board, all of which are parts of the bond contract. We further hold that the proceeds of the acreage taxes and other funds of the district (except the ad valorem tax under the Act of 1921) are specifically appropriated (*Lainhart v. Catts*, 75 So. 47, text 54; *Bannerman v. Catts*, 85 So. 336; *State v. Allen*, 91 So. 104, text 105), and pledged to the extent and for the purposes just mentioned, the appropriation and pledge continuing so long as these funds are necessary to meet the requirements of the bonds issued pursuant thereto. It is the duty of the State Treasurer and of the [fol. 106] Board of Commissioners to devote said funds to the purposes named, as far as may be necessary, before using any part thereof for any other purpose.

If, as urged by the Board, it would by this holding be left without adequate operating or maintenance revenue, the situation may be met by further exertion of the taxing power to provide the same.

The Board cites numerous cases, such as *White v. Mayor of Decatur*, 23 So. 999; *City of East St. Louis v. U. S.*, 110 U. S. 321; 28 L. Ed. 162; and *Clay County v. U. S.*, 115 U. S. 616; 29 L. Ed. 482; (See also 44 C. J. 1374) to the effect that where the principal and interest of bonds constitute a charge upon general revenue of a city or county,

such charge operates only upon surplus revenues after paying necessary operating and governmental expenses. But those cases are not in point. Neither the functions of the Everglades Drainage District, nor the purpose of its organization, are analogous to those of a city or county. The district is not for general governmental purposes, but it is a "statutory subdivision . . . for 'special' governmental purposes," namely, for local improvement purposes. The acreage taxes are not "general revenue" for purposes of "general government," within the sense of the cases last cited, but are "special assessments imposed solely to pay for benefits to accrue from the public improvements." *Martin v. Dade Much Land Co.*, 116 So. 449, text 464, 468; *Bannerman v. Catts*, 85 So. 336. The consequences of the differences pointed out are well defined in *Village of Kent v. U. S.*, 113 Fed. 232, which is a complete answer to this contention. See also *Lainhart v. Catts*, 75 So. 47, text 52. Nor in the cases cited by the Board was there a specific segregation of the bond funds and a requirement that they be disbursed for designated purposes, as there is here. It is held in Florida that even general creditors of a municipality, holding claims secured by general taxation, may enforce their claims by mandamus where there is a fund on hand out of which payment is authorized [fol. 107] and required, and which is sufficient for the purpose. *State ex rel. N. Y. Life Ins. Co. v. Curry*, — So. —: Opinion filed Feb'y. 16, 1932.

The Board also contends that as the acreage taxes are special assessments based upon benefits, the Legislature has the inherent power to re-determine the benefits at any time and to reduce or vary the special assessments accordingly. As respects the taxpayer alone, the Legislature may undoubtedly do so. *Bannerman v. Catts*, 85 So. 336. But the power of taxation must be exercised consistently with the principles which preserve the inviolability of contracts. *Graham v. Folsom*, 200 U. S. 248; 50 L. Ed. 464; *Mobile v. Watson*, 116 U. S. 289; 29 L. Ed. 620. The taxing power cannot be exercised so as to impair the obligation of contracts by directly abrogating or diminishing the means by which contracts, entered into in reliance upon such taxing power, can be performed. *Louisiana v. Pillsbury*, 105 U. S. 278; 26 L. Ed. 1090; *U. S. v. City of Quincy*, 4 Wall. (U. S.)

535; 18 L. Ed. 403; *Jenkins v. Enzinger*, 135 So. 785. If the assessment levied in any instance exceeds the benefits, the taxpayer, in the absence of waiver or estoppel, may secure appropriate judicial relief by the force of constitutional principles applicable to that situation, and bondholders would have to abide the consequences, as they took their bonds with notice that they are payable from special assessments. We are here concerned, however, with a voluntary reduction by legislative or administrative action, to the alleged impairment of plaintiffs' contract rights as a bondholder. We are not here concerned with the validity of any of these acts as taxing measures.

It becomes material to now determine what rates of acreage taxes, as levied by the several acts, are within the obligation of the bond contracts of these plaintiffs.

Plaintiffs contend that they are entitled to the rates levied by Chap. 10026, Acts of 1925, which are substantially [fol. 108] higher than those imposed by the Act of 1923, and prior acts. Chap. 10026 is an amendment of Secs. 1160, 1164, and 1178, R. G. S. 1920, which sections are, respectively, a codification of Secs. 1, 5 and 19 of the original Act of 1913, as amended. Chap. 10026 altered the boundaries of the district; authorized the issue of \$3,000,000.00 additional bonds; and, conformably to the requirements of Chap. 6957, Acts of 1915 (Sec. 10) provided additional taxes by increasing the former rates of acreage taxes. These additional bonds have never been issued. Plaintiffs contend that notwithstanding that fact, the refunding bonds issued pursuant to Chap. 10027, Acts of 1925, some of which plaintiffs, own, were by the latter act constituted "an obligation of equal dignity with any and all other bonds heretofore, or that may hereafter be, issued against and by said district, "thereby placing these refunding bonds on a parity of obligation and payment with other bonds, from which the plaintiffs conclude that "the refunding bonds were issued and sold in reliance upon the rate of taxation imposed by Chap. 10026," thereby constituting the rates fixed by the latter act a part of the bond contract as to the refunding bonds.

Although the refunding bonds are on a parity of obligation and payment with the other bonds of the district, we do not concur in the view that plaintiffs have acquired a vested contract right in the rates fixed by Chap. 10026.

Plaintiffs purchased their bonds (except the refunding bonds, which will hereafter be dealt with) when the rates fixed by the Act of 1923, or prior acts, were in effect, and in reliance upon the rates fixed by those acts,—not upon the 1925 Act. To the extent of the increase in rates prescribed by Chap. 10026, those rates are in the nature of an offer or proposal to prospective bondholders who may purchase bonds in reliance upon such increase. That offer has not been accepted, as no additional bonds authorized by Chap. 10026 have been issued. This situation is contrary in that respect to the facts in *Louisiana v. Pillsbury*, supra, wherein the plaintiffs' bonds were acquired after, and in reliance upon, the supplemental act increasing the levy. To the extent of the increase over the former rates, the additional taxes levied by Chap. 10026 do not constitute a specific trust fund for the benefit of plaintiffs' bonds, as was the case in *Baring v. Dabney*, 19 Wall. (U. S.) 1; 22 L. Ed. 90, upon which plaintiffs rely, but to the extent of such increase they constitute "additional taxes" to pay the "additional" bonds authorized by the act, which is all that is required in the plaintiffs' bond contract, this particular phase of which rests in Chap. 6957, Acts of 1915, Sec. 10. We are not now concerned with what the situation may be if and when additional bonds are issued by authority of Chap. 10026. Until some of the additional bonds authorized by Chap. 10026 are issued and sold, there is no consideration for the increased rates therein provided, and such increases do not come into operation as a part of the Board's contract with existing bondholders who acquired their bonds in reliance upon the rates fixed by prior acts. Until additional bonds are sold pursuant to the 1925 Act, the rates fixed by that Act are a potential—not a vested,—right as to the holders of bonds issued under prior acts. *U. S. v. County Court*, 2 Fed. 1.

The same is true as to the rates fixed by Chap. 13633, Acts of 1929, under which \$3,000,000.00 additional bonds were authorized but never issued.

Nor does the issue of refunding bonds under Chap. 10027 bring into operation the increase in rates provided in Chap. 10026, so as to give plaintiffs a vested right in such increase. Chap. 10027 is not an amendment of original Sec. 19 which relates to the issue of bonds and additional bonds. It is an amendment of original Sec. 20, which relates to

redemption (and denomination) of bonds. These refunding bonds are in lieu of other bonds outstanding under the [fol. 110] 1923 Act and prior acts, which former bonds were retired pro tanto by the proceeds of these refunding bonds. There is no authority in this act to fund or refund any obligations of the district other than existing bonds and interest thereon. The indebtedness of the district, therefore, was not increased, nor was any additional indebtedness created by the refunding bonds. Their issue was a renewal (See *Davis v. Dixon*, 123 So. 536, text 538; *State v. Weinrich*, 236 S. W. 872) of an existing debt which had been incurred in reliance upon the rates of taxation fixed by the 1923 Act, and prior acts. The refunding bonds are, therefore, not "additional" bonds within the sense of Chap. 6957 (Sec. 10), Acts of 1915, so as to require the levy of "additional" taxes, although such refunding bonds are of equal dignity with all other outstanding bonds and are entitled to parity of payment out of the sinking fund hereinabove referred to. No specific increase in tax rates having been levied or authorized in the refunding act, the tax levies applicable to the retired bonds apply also to the refunding bonds by which the former bonds were retired.

We hold, however, that the tax levy imposed by Chap. 9119, Acts of 1923, the latest act pursuant to which plaintiffs' bonds (other than refunding) have been issued, is a part of plaintiffs' bond contract. As against the district and its managing officers, plaintiffs are entitled to the continued levy of drainage taxes as fixed by that act, or their equivalent, so long as necessary to pay interest and provide a sinking fund as required by Sec. 24 of the original Act of 1913 (Sec. 1560, C. G. L. 1927) and by the resolutions of the Board pursuant to which plaintiffs' bonds were issued. Whatever may be the judicially determined rights of taxpayers in respect to the assessments against their lands, voluntary legislative or administrative action which has the effect of directly diminishing the potency or benefits of the Act of 1923, either by reduction of taxes or diversion [fol. 111] of proceeds to administration or other purposes, impairs the obligation of plaintiffs' contract. *U. S. v. City of Quincy*, 4 Wall. (U. S.) 535; 18 L. Ed. 403; *Louisiana v. McComb*, 92 U. S. 531; 23 L. Ed. 625; *Galena v. U. S.*, 5 Wall. (U. S.) 705; 18 L. Ed. 560; *Trustees v. Bailey*, 10 Fla. 112; *Jenkins v. Entzinger*, 135 So. 785.

We hold, therefore, that Sec. 26 of Chap. 13633, Acts of 1929, to the extent that it purports to authorize the issuance of \$3,000,000.00 additional bonds, is inoperative as against these plaintiffs, unless the taxes therein levied are a sufficient increase over those fixed by the Act of 1923 to pay the additional bonds. Whether or not they are, is a question of fact. We further hold that Sec. 6 of Chap. 13633, insofar as it purports to fix acreage taxes, or to authorize the Board to make deductions (on account of Okeechobee Flood Control District or otherwise) or reductions below those imposed by Chap. 9119, Acts of 1923, or a substantial equivalent thereof, or to otherwise diminish the funds provided by the Act of 1923 for the payment of bonds issued pursuant to that and prior acts, is inoperative as against these plaintiffs. Secs. 7 and 8 of Chap. 14717, Acts of 1931, and those portions of Secs. 43 and 44 of said Sec. 14717, which purport to fix acreage taxes and to create an administration fund from the proceeds of acreage taxes, are also inoperative against the plaintiffs insofar as those sections result in reducing or diverting the proceeds of drainage taxes so that the amount thereof available for interest and sinking fund requirements for outstanding bonds will be less than under Chap. 9119, Act of 1923. Nor may the proceeds of the administration fund be pledged pursuant to Sec. 43 (d) to the prejudice of interest and sinking fund requirements to which plaintiffs are entitled. Moreover, those portions of Secs. 7 and 44 (b) of Chap. 14717, which purport to bring into participation of payment from the proceeds of acreage taxes obligation of the district other than bond obligations, are likewise inoperative as against these plaintiffs until all interest and sinking fund requirements for said bond obligations as hereinabove adjudicated, have been fully met.

Sec. 70 of Chap. 14717 purports to authorize the issuance of district bonds for the purpose of refunding any "bond, note, certificate of indebtedness, or other obligation now outstanding, for the payment of which the credit of the district is pledged," but levies no additional tax. The district now has outstanding large obligations not represented by bonds. So far as bonds may be issued under this section for the sole purpose of refunding existing bonds issued pursuant to the Act of 1913 and its amendments, plaintiffs' bond contract would not be impaired. The same situation would obtain

as with the refunding bonds issued under Chap. 10027, hereinabove discussed. Sec. 70 (i) purports to make these refunding bonds payable from the Debt Service Fund provided in Secs. 7, 43 and 44 of the Act, which fund in turn is derived from acreage taxes. Insofar as the issue of bonds might be attempted under this section for the purpose of paying "notes, certificates of indebtedness or other obligations" of the district, such bonds would be funding—not refunding—bonds. While the indebtedness of the district might not be thereby increased; nevertheless, as against these plaintiffs it would bring into participation of payment out of acreage taxes what, as to the plaintiffs, would be "additional" bonds payable from the acreage taxes, unaccompanied by the levy of additional taxes sufficient to pay the same, contrary to Chap. 6957, Acts of 1915, Sec. 10, and to the extent that such bonds were issued for any of the purposes last named, such action would be an impairment of plaintiffs' contract obligation. While under Sec. 6 of the original act there would seem to be no objection to the use of acreage taxes to pay unbonded indebtedness after the sinking fund requirements of Sec. 24 have been fully met, [fol. 113] the issue of additional bonds without the levy of sufficient additional taxes to pay the same is forbidden, as against bondholders, by Chap. 6957, Acts of 1915, Sec. 10, and there is a reasonable basis for the distinction.

An argument is made in plaintiffs' briefs as to the validity of the Unit District plan provided in Secs. 10 to 42, inclusive, of the Act of 1931, and the issuance of further bonds thereunder, but as these sections are not assailed by the bill of complaint we do not consider them.

This disposes of the first and second questions hereinabove stated. We now take up the third.

Under Sec. 12 of the original Act of 1913, when lands in the district were sold for non-payment of drainage assessments, and when there were no bidders at the sale, the Tax Collector was required to bid off such land for the Board of Commissioners of Everglades Drainage District.

The bill of complaint alleges that after the sale of bonds under the Act of 1913, as amended in 1915, it was required as a condition of the purchase of additional bonds by buyers that the last mentioned provision of Sec. 12 be changed, and that accordingly Chap. 7305, Acts of 1917, was enacted, Sec. 3 of which (Sec. 1541, C. G. L. 1927) amends Sec. 12 of the original Act of 1913, and provides: " * * * in case there

are no bidders, the whole tract (upon which drainage taxes are unpaid) shall be bid off by the Tax Collector for the Trustees of the Internal Improvement Fund and shall be held by said Trustees during the period herein allowed for the redemption of said lands in like manner and with like effect as lands sold to the State for non-payment of State and County taxes are held by the State as now provided by law." Sec. 4 of Chap. 7305 provides that the Tax Collector [fol. 114] shall issue a tax certificate to the Trustees of the Internal Improvement Fund as of the date of sale, "and if the land is not redeemed on or before two years from the date of such certificate, the title to the same shall immediately vest in the said Trustees without the issuing of any deed as in other cases and the certificates held by the said Trustees shall be evidence of the title of the said Trustees." (Chap. 10042, Acts of 1925, and Chap. 14717, Acts of 1931, purport to alter the redemption period.) The Trustees are authorized to sell and convey such lands, and the proceeds thereof "shall be applied by said Trustees in payment of drainage taxes or assessments, or other obligations of said Trustees." Tax certificates held by the Trustees may be redeemed within the time prescribed, and the amount paid upon such redemption is remitted to the Trustees. (Chap. 7305, Acts of 1917, Sec. 5.)

Under then existing laws, when State and County taxes were unpaid, the lands were sold and if there was a private purchaser a certificate was issued to him, for which he was required to pay at the time of the purchase. (Sec. 974, C. G. L. 1927.) In the absence of a private purchaser the lands were bid off to the State, no payment being required by the State, future taxes against such lands being omitted until a redemption occurred. After two years the private purchaser could apply for and receive a deed. When land was bid off to the State, title thereto vested in the State two years after the issuance of the certificate, but the lands remain subject to redemption until a tax deed is issued to a private purchaser who might purchase the certificate from the State and, after two years from the date of the certificate, apply for a deed.

Viewing the history of this legislation in the light of the allegations of the bill of complaint, it appears that by 1917 [fol. 115] it had become apparent that drainage taxes might remain unpaid to such an extent that funds of the district would be insufficient to meet bond requirements if additional

bonds were issued, and that before additional bonds would be salable it would be necessary to guard against such a situation. This was undertaken by requiring the Trustees of the Internal Improvement Fund, instead of the Board of Commissioners, to become the purchasers of all tax certificates for which there was no other purchaser, thus preventing tax default and consequent depletion of the district fund available for interest and sinking fund requirements. The provisions of the Act of 1917 relating to the Trustees, are harmonious with the purpose of the Internal Improvement Fund as defined by Chap. 610, Acts of 1855. See *Martin v. Dade Muck Land Co.*, 116 So. 449.

Although the Act of 1917 does not in terms require the Trustees to "pay for" the certificates bid in for them, it is obvious that such was the legislative intent. No purpose is evidenced to make a gift of these lands to the Trustees. According to the allegations of the bill, the Trustees have so construed the act by paying for such certificates, and paying subsequent drainage taxes on certificated lands, until 1927, but not since.

Nor does the Act of 1917 in express terms fix the time when the Trustees shall pay for their certificates. The Act of 1917, requiring all lands for which there were no other purchasers to be bid in for the Trustees, must be construed in *pari materia* with other parts of the 1913 Act, of which the Act of 1917 is an amendment. By Sec. 13 of the original act, which has remained unaltered (See Sec. 1542, C. G. L. 1927, also Chap. 14717, Sec. 56-d), when lands are sold for taxes the Tax Collector must require immediate payment "by any 'person' to whom any parcel of such land may be struck off * * *." The Act of 1917 requires the Tax [fol. 116] Collector to issue tax certificates to the Trustees at the time of sale, just as to any other purchaser. Although Sec. 17 of the original act provided that proceeds of redeemed certificates should be paid to the Board of Commissioners, the amendatory Act of 1917 provides that when certificates bid in for the Trustees are redeemed, the proceeds of such redemption shall be remitted to the Trustees. There would seem to be no occasion for the latter provision unless the Legislature contemplated that the Trustees should have previously paid for the certificates. Otherwise, the proceeds of redemption should go to the district as its property. No legislative intent is evidenced by the act to postpone payment by the Trustees for their certificates be-

yond the time fixed for payment by other purchasers, and we see no sufficient reason why the act should be so construed. Although the word "person" is frequently held not to embrace public governmental bodies, such as cities and counties, we see no reason why that word as used in Sec. 13 of the original act—of which the Act of 1917 is amendatory—should not apply to the Trustees; dealing as it does, not with governmental affairs, but with business transactions in connection with contract rights. The provisions of the Act of 1917 that lands bid off for the Trustees "shall be held by said Trustees during the period hereinabove allowed for redemption in like manner and with like effect as lands sold to the State for non-payment of State and County taxes are held by the State" merely analogizes the two situations with respect to the status of the lands during the redemption period, the vesting of title when lands are not redeemed, the further sale of tax certificates by the Trustees to private persons, and the like. That the State does not under general tax laws pay for lands bid off to it, does not, in view of the provisions of original Sec. 13 of the Everglades Act, relieve the Trustees [fol. 117] from paying for the certificates bid off for them as indicated.

We hold, therefore, that Chap. 7305, Acts of 1917, is a part of the contract with bondholders, furnishing an additional measure of security upon which they are entitled to rely, and that it is the duty of the Trustees of the Internal Improvement Fund to pay for drainage tax certificates immediately when the lands are bid off for the Trustees. This refers, of course, to certificates representing unpaid drainage taxes, the levy of which is a part of the bond contract. This disposes of the third question. We now take up the fourth.

By Sec. 5 of the original act (Sec. 1534, C.G.L. 1927) lands within the district "held" by the Trustees of the Internal Improvement Fund are subject to drainage taxes, and the Trustees are authorized and empowered to pay the same "in furtherance of the trust upon which the lands are held," the latter referring to the grant under the Swamp Land Congressional Act of 1850. In Sec. 48 of the Act of 1931, this provision is brought forward and the language of the corresponding former provision is emphasized by adding that these lands shall be subject to taxes "in the same manner as privately owned lands."

It is conceded that public lands held by the Trustees and which have never been disposed of are subject to these taxes, but as to lands re-acquired by the Trustees through tax sales pursuant to Chap. 7305, Acts of 1917, Sec. 4, the Trustees deny liability for subsequent taxes.

The Act of 1917 (Sec. 4) provides that when lands are bid off for the Trustees a tax certificate shall immediately issue in the name of the Trustees "and if the land is not redeemed on or before two years from the date of such certificate the title to the same shall immediately vest in said Trustees . . . and the certificate [fol. 118] . . . shall be evidence of the title of the Trustees." The Trustees are authorized to sell such lands, execute a deed therefor, "as other deeds made by them are signed, and shall vest in the grantee . . . the fee simple estate of such lands." The proceeds of such sales, including any profits realized, are the property of the Trustees and are to be devoted to the obligations of the Trustees, including drainage taxes. If tax certificates held by the Trustees are redeemed, the proceeds of the redemption go to the Trustees to be used as required by law.

These and other provisions, when adjusted to their proper perspective in relation to the entire Everglades legislation, lead us to hold that so far as the bond contract is concerned lands thus bid in for the Trustees (commonly referred to as "certificated" lands) become "lands within the Everglades Drainage District 'held' by the Trustees of the Internal Improvement Fund," within the meaning of Sec. 5 of the original act, two years after the date of the certificate, when title vests in the Trustees if the certificate be not sooner redeemed.

As these provisions are a part of the bond contract, it is the duty of the Trustees to pay drainage taxes levied on such lands from and after the time when title vests in the Trustees pursuant to the acts under which plaintiffs' bonds were issued, such payment to be made from funds derived by the Trustees from "the use or sales of swamp and overflowed lands held by the Trustees under the trust declared in Chap. 610, Acts of 1854-1855, and subsequent amendatory and supplemental statutes." *Martin v. Dade Muck Land Co.*, 116 So. 449, headnote 3. Although the powers and duties of the Trustees are subject to legislative control, the Trustees cannot, even by

legislative direction, execute a later trust to the direct [fol. 119] prejudice of contract rights of third parties in the execution of a prior trust. *Trustees v. Root*, 59 Fla. 648; 51 So. 535.

Although all lands bid off for the non-payment of taxes remain charged with the lien of subsequent taxes (Chap. 7305, Acts of 1917, Sec. 2), which would include lands bid off to the Trustees, we discover no duty imposed by the statute upon the Trustees to pay drainage taxes during the two years that the tax certificate is pending and subject to redemption; as the lands are not during that period held by the Trustees within the meaning of Sec. 5 of the original act, but are held "in like manner and with like effect as lands sold to the State for non-payment of state and county taxes." Sec. 3, Chap. 7305; Sec. 1541, C.G.L. 1927.

If it were not the recognized legislative intent that the Trustees should pay taxes on certificated lands after title thereto vests in the Trustees, it is strange that for fourteen years—from 1917 to 1931—no legislative attempt was made to so declare. The bill of complaint alleges, also, that the Trustees paid these taxes until 1927. That subsequent taxes are omitted and not paid by the State upon lands for which it holds tax certificates under general taxation statutes, does not by analogy relieve the Trustees of their obligation just stated, in view of the express provisions of Sec. 5 of the original act, as amended.

We also hold that under the Act of 1917, so far as the rights of these plaintiffs are concerned, tax certificates issued to the Trustees are held by them in their own right as Trustees of the Internal Improvement Fund under Chap. 610, *supra*, and not in trust for the Board of Commissioners.

By Secs. 56 (c), 65 (a), and 65 (b) of Chap. 14717, Acts of 1931, it is enacted that when there are no other bidders at tax sales the lands shall be struck off for the Board of Commissioners (not to the Trustees of the Internal Improvement Fund as has been the case since 1917); that tax certificates now held by the Trustees, resulting from tax sales of former years, are held by said Trustees in trust for the Board of Commissioners; that the Trustees shall assign to the Board all such tax certificates now in the hands of the Trustees, subject to the right of the Trustees to receive compensation there-

for from the Board, and that any sum of money found to be owing from the Board to the Trustees by reason of such assignment may be paid by the relinquishment by the Board of its rights in such tax certificates as may be agreed upon, and for any balance then remaining the Board may issue its certificates of indebtedness to the Trustees, which certificates of indebtedness shall be receivable by the Board of Commissioners from the Trustees, or from any person who shall thereafter purchase lands within the district, in payment of drainage taxes upon lands which at the enactment of the statute were held, or may hereafter be held, by the Trustees, and that such certificates of indebtedness shall be liquidated as they are presented in payment of drainage taxes upon such lands. The effect of these provisions is to entirely destroy duties and obligations now and heretofore resting on the Trustees which are a part of plaintiffs' security and one of plaintiffs' remedies against default in payment of their bonds.

In the view we have taken of Chap. 7305, Acts of 1917, as it relates to the Trustees of the Internal Improvement Fund, the three last mentioned sections of the Act of 1931, for obvious reasons, impair the obligation of plaintiffs' bond contract, and as to the plaintiffs are inoperative. *Barnitz v. Beverly*, 163 U.S. 118; 41 L. Ed. 93; *Moore v. Gas Securities Co.*, 278 Fed. 111; *Moore v. Otis*, 275 Fed. 747; *In re: Cranberry Creek Drg. Dist.*, 231 N.W. 588.

Sec. 67 of the 1931 Act is also assailed by the supplement [fol. 121] mental bill, but as that section depends for its operation upon the validity of other sections which we have held inoperative, it is unnecessary to consider that section in detail. This disposes of the fourth question.

As to the fifth: Sec. 71 of the Act of 1931 enacts that "in the redemption of lands from tax certificates that shall be transferred to the Board under the provisions of this act and in the redemption of lands which shall be sold to the Board for non-payment of taxes assessed for the year 1930," the person entitled to redeem may pay the amount requisite for redemption with bonds of the district, or interest coupons, at par. This section does not purport to extend that privilege to the redemption of certificates held by the Trustees, nor to the redemption of lands sold to the Trustees. Operation of the latter provision of the section depends upon the existence of one

of the two conditions recited in the first part of the section. As we have held that the provision for the transfer of outstanding tax certificates by the Trustees to the Board, and the provision for future certificates to be bid off for the Board are both inoperative as against these plaintiffs, it leaves no field in which Sec. 71 may lawfully operate, because, as against these plaintiffs, there can be no certificates assigned by the Trustees to the Board and no lands struck off to the Board, until the requirements of plaintiffs' bond contract are satisfied. We, therefore, do not express an opinion as to how far, if at all, the Legislature may authorize the payment of drainage taxes, or the redemption of tax certificates from their lawful owners, with bonds in lieu of cash.

As to the sixth question: The provisions of the 1931 Act, changing the personnel of Board of Commissioners to five civilians in lieu of five State officers as originally provided, impairs no vested contract right of plaintiffs. [fol. 122] The district remains, with officers empowered to perform all its duties toward bondholders. Neither the resources nor the remedy for the payment of plaintiffs' bonds are affected within the purview of the contract clause of the Constitution. A mere change in personnel of a public board or body is not usually regarded as an impairment of contract obligations. See *State v. Knowles*, 16 Fla. 577; *Graham v. Folsom*, 200 U.S. 248; 50 L. Ed. 464; *Mobile v. Watson*, 116 U.S. 289; 29 L. Ed. 620; *State v. Goodgame*, 108 So. 836; 47 A.L.R. 118; *Board v. Phillips*, 73 Pac. 97; *One Cooley Const. Lim.*, 8th Ed., p. 560; 12 C.J. 1008.

Interlocutory injunction will issue conformable to the views here expressed.

— — —, Circuit Judge. (S.) Wm. B. Sheppard,
District Judge. (S.) Louie W. Strum, District
Judge.

IN UNITED STATES DISTRICT COURT

OPINION

BRYAN, Circuit Judge, dissenting in part:

I dissent from so much of the majority opinion as holds the Trustees of the Internal Improvement Fund liable to pay for tax certificates issued upon the failure of land-

owners to pay drainage taxes. The Trustees in my opinion hold the certificated lands in trust for the bondholders and other creditors of the drainage district. The Compiled General Laws provide that lands upon which drainage taxes are delinquent may be sold, and if there is no private bidder, shall be "bid off" by the tax collector for the Trustees to be held by them for the two year [fol. 123] period allowed for redemption "in like manner and with like effect as lands sold to the State for non-payment of State and County taxes are held by the State." S. 1541. In the case of a sale for non-payment of ordinary State and county taxes, if there are no private bidders, the land is bid off by the tax collector for the State. S. 972. Two years are allowed for redemption, but the owner may redeem at any time before the land is sold to another. *Hightower v. Hogan*, 69 Fla. 86. When land in the drainage district has been bid off for the Trustees for the non-payment of drainage taxes the title vests in the Trustees, but they hold it subject to the owner's right of redemption which continues until the land is sold. The sale must be for at least as much as accrued taxes, and in the event of such a sale, but not otherwise, the Trustees are required to pay the delinquent drainage taxes. If they were purchasers in their own right, their obligation to pay would naturally arise as of the date of the tax sale, and would not be conditioned on a future sale. The provision of S. 1, chap. 9119, Laws of 1923, subjecting land within the drainage district held by the Trustees to drainage taxes, refers to land owned by the Trustees in their own right, and not to land held in trust under tax certificates. If it had been the intention of the legislature to bind the Trustees as purchasers of land upon which drainage taxes had not been paid, there should and doubtless would have been a plain and unequivocal provision to that effect. It is not to be inferred that the legislature intended to impose a burden as great as is here contended for merely because it adopted existing provisions of law applicable to the holding and disposition of lands by the State upon default in the payment of ordinary taxes.

Upon the other questions involved, I concur in the opinion of the majority.

[fol. 124] IN UNITED STATES DISTRICT COURT

JOINT AND SEVERAL ANSWER OF DEFENDANTS TRUSTEES OF THE
INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA—
Filed October 13, 1932

Come now Doyle E. Carlton, Governor of the State of Florida, Ernest Amos, Comptroller of said State, W. V. Knott, Treasurer of said State, Cary D. Landis, Attorney General of said State, and Nathan Mayo, Commissioner of Agriculture of said State, as and constituting the Trustees of the Internal Improvement Fund of the State of Florida, and for answer to the original as well as the supplemental bills of complaint herein say:

Particularly answering the original bill of complaint herein, these defendants say:

1

Answering paragraph 1 of the original bill of complaint these defendants admit the allegations contained therein.

2

Answering paragraph 2 of the original bill of complaint these defendants admit the allegations contained therein.

3

Answering paragraph 3 of the original bill of complaint these defendants admit that the Everglades Drainage District comprises more than four million acres of public and private lands in the southern part of Florida; that a considerable portion of said lands was formerly owned by the United States and was granted by Congress to the State of Florida by the Act of September 28, 1850, as swamp and overflowed lands included within the grant of that statute; that as indicated in said statute the grant was made to the State of Florida to enable it to construct the necessary levees and drains to reclaim such swamp and overflowed [fol. 125] lands; that the statute provided that the proceeds of said lands should be applied exclusively, as far as necessary, to the purpose of reclaiming said lands; that the obligation of the State to apply the proceeds of said lands for the purpose stated in the Act of Congress rests in the sover-

eign-relation of the United States and of the State of Florida, but these defendants deny that all of said more than four million acres of land in the Everglades Drainage District came to the State under the Swamp and Overflowed land grant Act, but aver that a considerable portion of said area did not come to the State under said Act. And these defendants further deny that the Act of Congress provided that the lands were to be applied exclusively, as far as necessary, to the purpose of reclaiming said lands and that there was any obligation of the State under said Act of Congress to apply the lands for the purposes stated in the Act, but aver that the statute only provided for the proceeds of the land to be so applied.

Further answering paragraph 3 of the original bill of complaint these defendants admit that Chapter 610 of the Laws of the State of Florida, approved January 6, 1855, provides for the management and disposition of the swamp and overflowed lands belonging to the State of Florida under the Act of Congress of September 28, 1850; that the lands were vested by said statute of the State of Florida in the Governor and four other State officials, and their successors in office, as Trustees of the Internal Improvement Fund of the State of Florida in trust for the purposes defined in the statute; that the Trustees had stated powers and duties with reference to the swamp and overflowed lands and that they were required by the State statute to make such arrangements for the drainage of the swamp and overflowed lands as in their judgment might be most advantageous to the Internal Improvement Fund and the settlement and cultivation of the land, but these defendants deny that Chapter 610 of the Laws of the State of Florida, approved [fol. 126] January 6, 1855, recognizes that there is an obligation of the State of Florida to drain the lands granted under the Federal swamp land grant Act, in that the obligation is confined to the application of the proceeds from said lands to drain it.

Further answering said paragraph 3 of the original bill of complaint these defendants admit that the Legislature of the State of Florida by Chapter 5377, Acts of 1905, made provision for the drainage operations to be carried on by the Board of Drainage Commissioners; that this Act was amended by Chapter 5709 of the Acts of 1907, by which a drainage district was created in the Everglades territory; that Chapter 6456, Acts of 1913, established the Ever-

glades Drainage District and levied a graduated acreage or drainage tax for the drainage operations to be prosecuted by a board of Commissioners of Everglades Drainage District, which board of commissioners was composed of the same State officials who are the Trustees of the Internal Improvement Fund, but these defendants deny that Chapter 5377, Acts of 1905, or the other statutes mentioned, made provision for the drainage operations to be carried on by the Trustees of the Internal Improvement Fund.

Further answering said paragraph 3 of the original bill of complaint these defendants deny the following allegations contained therein, to wit:

"In furtherance of the duty and purpose to comply with the granting Act of Congress requiring the lands to be drained, the state officers and their successors in office, who are by Chapter 610 of the laws of 1855, made trustees of the Internal Improvement Fund with the statutory powers and duties with reference to draining the swamp and overflowed lands, are by Chapter 6456 of the Acts of 1913 made the Board of Commissioners of Everglades Drainage District, with authority to establish and construct a system of canals, levees, dikes, draws, locks and reservoirs to reclaim the lands within the Everglades Drainage District."

and these defendants aver that the granting Act of Congress did not require the lands to be drained, but that only proceeds from said lands should be applied to drainage as far as necessary. And these defendants aver that the powers [fol. 127] and duties of the Trustees of the Internal Improvement Fund are separate and distinct from the powers and duties of the Board of Commissioners of Everglades Drainage District.

Further answering said paragraph 3 of the original bill of complaint these defendants admit that the need of flood control and its benefits to public safety and health, and to the lands in the entire district, are obvious upon a consideration of the history and conditions of the everglades section and the adjacent territory; that this has been recognized by the Federal grant of swamp and overflowed lands to the State, in providing that the proceeds of said lands, as far as necessary, should be used for constructing levees and drains which are appropriate to flood control as well as to surface drainage and other improvements, but these de-

defendants deny that the said Federal grant of swamp and overflowed lands provided that such lands should be used for constructing levees and drains.

Further answering said paragraph 3 of the original bill of complaint these defendants admit that the Everglades Drainage District is a statutory district, created by the State for the purpose of drainage; that the Trustees of the Internal Improvement Fund now own approximately eight hundred thousand acres of land in the Everglades Drainage District; which they owned prior to the establishment of the district; that a substantial part of the lands in the district have been bid off by the tax collectors of the several counties in the district to the Trustees of the Internal Improvement Fund for default in the payment of drainage taxes, but these defendants deny that the lands were sold to said Trustees as a bona fide sale, but aver that said lands were bid off to said Trustees to be held by them subject to the right of redemption.

4

Answering paragraph 4 of the original bill of complaint these defendants admit that under the statute establishing [fol. 128] the Everglades Drainage District it was contemplated that the funds necessary to construct and complete the canals and related improvements which were urgently required for the reclamation of the land in the district would be secured through drainage or acreage taxes, to be paid by the owners of the land in the district; that the expenditures required to make certain of the improvements would be large; that the expenditure for Saint Lucie Canal was approximately six million dollars; that such improvements, if they were to be made promptly, must be constructed out of borrowed money which money in turn should be repaid out of taxes; and they aver that funds to construct said works would be secured through drainage taxes to be paid by the owners of the land, but that the law creating said district did not contemplate that the Trustees were to pay taxes which the owners of the land did not pay and thereby underwrite the bonds.

Further answering said paragraph 4 of the original bill of complaint these defendants admit that Chapter 6456 of the Acts of 1913, Laws of Florida, under which said district

was established, as amended by Chapter 6957 of the Acts of 1915, Laws of Florida, authorized the issue and sale by the said Board of Commissioners of Everglades Drainage District of its bonds in the principal sum of \$3,500,000.00, the said bonds to be in denominations of \$1,000.00, or such smaller denominations, not less than \$100.00, as the said board might determine, and to bear interest at a rate to be fixed by said board not exceeding Six per centum (6%) per annum, payable semi-annually, and represented by interest coupons in such form as should be prescribed by the said Board of Commissioners.

Further answering said paragraph 4 of the original bill of complaint these defendants admit that the said statute further provided that the said bonds should be in such form as should be prescribed by the Board of Commissioners, should recite that they were issued under the authority of the said statute, which should be referred to in said bonds [fol. 129] by number of chapter and date of approval, and which should pledge the faith and credit of the said Board of Commissioners for the prompt payment of the principal and interest of the said bonds. It was further provided by the said legislation that the said bonds should be numbered consecutively in the order of their issuance, should be signed by each member of the said Board and attested by the Secretary thereof under the seal of the said Board, and should have interest coupons annexed, which should be consecutively numbered, specify the number of the bond to which they were attached, and should be attested by the lithographed or engraved fac simile signature of the Secretary of the said Board and the Chairman or other member of the said Board as the said Board should designate. In and by said statute it was provided that when the said Board of Commissioners had caused any bonds to be prepared, signed and sold in the manner prescribed in the statute, the bonds should be submitted to the Attorney General of the State of Florida, whereupon it should be the duty of the said Attorney General to examine carefully the said bonds in connection with the facts and the Constitution and the provisions of the statute, and if as a result of such examination the said Attorney General should find that the said bonds were issued in conformity with the Constitution and statutes and that they were binding and valid obligations upon the said Board of Commissioners of the Everglades Drainage

District he should officially so certify on each of said bonds by a certificate to be signed by him as follows:

"The within bond examined and certified to be regularly issued and a valid obligation of the Board of Commissioners of Everglades Drainage District."

The said statute further required that the certificate of the Attorney General so signed by him should be deemed and received in evidence as proof of the validity of the bonds with the coupons thereto attached, and that no defense [fol. 130] should be offered against any bond so certified in any action or proceeding except forgery. It was further provided that after the said bonds had been examined and approved by the Attorney General as provided in the said statutes, they should be delivered to the State Treasurer, who should give his receipt to the said Board of Commissioners, therefor, and he was required to enter in a book to be kept by him the number of each bond, the rate of interest, the time it became due, the date of sale and the person to whom sold and his postoffice address, it being further required that the said State Treasurer should hold such bonds and be the legal custodian thereof and deliver the same to the purchaser upon resolution of the said Board duly recorded in the minutes of the said Board. In and by the said Statute of 1913, as amended, it was further provided that the said statute should, without reference to any other Act of the Legislature of the State of Florida, be full authority for the issuance and sale of the bonds by said statute authorized, which bonds it was provided by said statute should have all the qualities of negotiable paper under the law merchant and should not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof and should be incontestable in the hands of bona fide purchasers or holders thereof for value, and that no proceedings in respect to the issuance of any of said bonds should be necessary, except such as were required by the said statute.

Further answering said paragraph 4 of the original bill of complaint these defendants admit that in and by the said statute of 1913, as originally enacted and as amended, it was further provided that the said statute should constitute an irrepealable contract between the said Board of

Commissioners of Everglades Drainage District and the holders of any bonds and coupons thereof, issued pursuant to the provisions of the said statute, and that any holder of any such bonds or coupons might, either at law or in equity, by suit, action or mandamus, enforce and compel [fol. 131] the performance of the duties required by the said statute of any of the officers or persons mentioned in the statute in relation to said bonds or of the collection, enforcement and application of the taxes for the payment thereof.

Further answering said paragraph 4 of the original bill of complaint these defendants admit that the said Chapter 6456 of the Laws of Florida was further amended by Chapter 7305 of the Acts of 1917, but not in any respect modifying or repealing the above mentioned provision of the said Act of 1913. And these defendants further aver that the said original Everglades Drainage District Act, Chapter 6456, specifically provided in Section 23 thereof as follows:

"Provided, however, that no obligation authorized by this Act shall be construed as an obligation of this State, but only as the obligation of the drainage district herein created."

which provision was continued in the Everglades Drainage District statutes through all issues of bonds by said district; and aver that when Chapter 7305, Acts of 1917, amended said Chapter 6456 of the Acts of 1913, the Act of 1917 did not, in merely changing the name "Board of Commissioners of Everglades Drainage District" to the name "Trustees of the Internal Improvement Fund", to whom the tax certificates should be bid off by the tax collector, change in any respect the operation of the law in reference to said tax certificates. And they further aver that the statute as amended by Chapter 7305, Acts of 1917, did not provide for the Trustees of the Internal Improvement Fund to pay for tax certificates bid off to them by the tax collector, or to pay subsequent taxes thereon.

Answering paragraph 5 of the original bill of complaint these defendants admit the allegations contained therein

6

Answering paragraph 6 of the original bill of complaint these defendants admit the allegations contained therein.

[fol. 132]

7

Answering paragraph 7 of the original bill of complaint these defendants admit the allegations contained therein.

7-a

Answering paragraph 7-a of the original bill of complaint these defendants admit the allegations contained therein.

7-b

Answering paragraph 7-b of the original bill of complaint these defendants say that they are without knowledge of the allegations contained therein.

7-c

Answering paragraph 7-c of the original bill of complaint these defendants say that they are without knowledge as to the allegations contained therein.

8

Answering paragraph 8 of the original bill of complaint these defendants say that they are without knowledge of the allegations contained therein.

9

Answering paragraph 9 of the original bill of complaint these defendants admit the allegations contained therein, except the allegation of the amount of bonds now outstanding, with reference to which these defendants say that they are without knowledge.

10

Answering paragraph 10 of the original bill of complaint these defendants admit that the project to reclaim the land contained in Everglades Drainage District involved in 1913, and for some time thereafter, difficulties of an engineering, financial and practical nature, and that the Attorney General of the State of Florida in the written opinion which

he gave in each case, with reference to the bonds of the district, stated that he unqualifiedly approved of the collectibility of said bonds and of the sufficiency of the taxing power back of them, but these defendants deny all other allegations contained in said paragraph.

11

Answering paragraph 11 of the original bill of complaint these defendants admit all of the allegations contained therein, except the following, with reference to which they say that they are without knowledge:

"The amount of the drainage tax levied by the statute which was to be collected by the tax collectors without penalty between November 1st, 1930, and April 1st, 1931, was \$— and the total tax levied by the statute which was to be collected without penalty between November 1st, 1931, and April 1st, 1932, was \$—. The total amount required to pay the full interest on the bonds outstanding in the year beginning January 1st, 1931, was \$— and the total amount required to pay the full principal on the bonds maturing in the year 1931 was \$—."

Further answering said paragraph 11 of the original bill of complaint these defendants say that the scale of taxes, as by zones enumerated in said paragraph are according to Chapter 12017, Laws of Florida, Acts of 1927.

12

Answering paragraph 12 of the original bill of complaint these defendants admit the allegations contained therein with the exception of the allegations with reference to a resolution of the Board of Commissioners of Everglades Drainage District, under which each issue of its bonds was issued, and say that with reference thereto these defendants are without knowledge.

13

Answering paragraph 13 of the original bill of complaint these defendants admit that the Trustees of the Internal Improvement Fund are and were the agency of the State of Florida, and are and were the owners of a substantial part of the lands of the district which they owned before the district was established; that when the district was estab-

lished in 1913 and up to the year 1929, the same five public officials, the Governor of the State, the Comptroller of the State, the State Treasurer of the State, the Attorney General and the Commissioner of Agriculture, were both the Trustees of the Internal Improvement Fund and the Board of Commissioners of Everglades Drainage District and had held these offices at the time that all the bonds of the Board of Commissioners now outstanding were issued and sold, but these defendants deny that one of the vital provisions of the statute, under which the bonds of the Board of Commissioners were issued, securing the bonds and insuring their collectibility, is that the Trustees of the Internal Improvement Fund will bid in all lands of the district which are offered by the tax collector at public sale for non-payment of drainage taxes and which are not purchased by any other purchaser for the amount of the unpaid taxes, interest and penalties; that lands included within the Everglades Drainage District had all been the property of the State of Florida, on which state rested the obligation, under the granting statute of Congress, to reclaim such lands and that the Trustees themselves engaged in the reclamation of these lands prior to the establishment of the district in 1913, and these defendants aver that the statute does not require that the Trustees "will bid in all lands of the district which are offered by the tax collector at public sale for the non-payment of drainage taxes and which are not purchased by any other purchaser", but the statute provides as follows: "That the whole tract shall be bid off by the tax collector for the Trustees of the Internal Improvement Fund and shall be held by said Trustees during the period herein allowed for the redemption of said lands, in like manner and with like effect as lands sold to the State for non-payment of State and County taxes are held by the State as now provided by law."

Further answering said paragraph 13 of the original bill of complaint these defendants say that they are without knowledge as to the following allegations contained therein as follows:

[fol. 135] "As a condition to the purchase of additional bonds of the Board of Commissioners, Spitzer, Rorick & Company in 1917 required that the statute under which additional bonds should be issued must provide that when lands in the district are offered at public sale by the tax collector

for non-payment of drainage taxes, if no purchaser appears at the sale who purchases the lands so offered for the amount of the taxes, interest and penalties, and pays therefor in cash, the tax collector shall be required to bid off such lands to the Trustees of the Internal Improvement Fund. Accordingly, at the suggestion of the Board of Commissioners the Legislature enacted in 1917 a statute containing such a provision for the bidding off of such lands to the Trustees of the Internal Improvement Fund."

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

"The legislature by Section 8, Chapter 6456 of the Acts of 1913, as amended in 1915 and 1919, enacted that the Board of Commissioners on the second Tuesday in January of each year, shall prepare for each county in which lands of Everglades Drainage District lie, a list of the lands in such county which are also embraced in the drainage district. The statute required that after public notice had been given of the preparation of such tax lists, and an opportunity for hearing, the lists shall be forwarded by mail to the assessors of the respective counties in which the lands of the drainage district lie."

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein, except as to date of amendment which they aver was in 1917 instead of 1915 as alleged in the paragraph:

"The legislature by Section 9 of Chapter 6456 of the Acts of 1913, as amended in 1915, enacted that upon receipt of the tax list the tax assessor of the county shall enter upon the tax rolls of the county, the tax or assessment shown by the list to be assessed for drainage taxes for the particular year against the lands described in the list, in a separate column under the head of, "Drainage Taxes" and opposite the name of the owner of the land. The tax assessment shall constitute a lien upon the lands so assessed as of the first day of January of each year in which the entries on the tax rolls are made, which lien shall be superior in dignity to all other liens upon said lands and equal in dignity to the lien for state and county taxes upon said land."

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

[fol. 136] "The tax assessor of the county is required by the statute to attach to the tax roll for each year a special warrant to the tax collector of the county directing the tax collector to collect the drainage taxes, and such warrant shall be the authority of the tax collector for the collection of the drainage taxes, and shall remain in full force until all of the drainage taxes shown in the tax rolls to have been assessed shall be collected. The warrant for the collection of the drainage taxes which is addressed to the tax collector of the county is specifically required by the statute to read as follows: 'You are hereby commanded to collect out of the real estate against which drainage taxes are assessed and set forth in this roll, and from the persons or corporations named therein, against whose lands drainage taxes are assessed, the drainage tax set down in said roll opposite each name, corporation or parcel of land therein described, and in case such drainage tax is not paid on or before the first day of April next, you are to collect the same by levy and sale of the lands so assessed; and all sums collected for drainage taxes you are to pay to the Board of Commissioners of Everglades Drainage District.' "

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

"All drainage taxes levied by the statute on the lands in Everglades Drainage District are required to be collected on or before the first day of April following the year in which the tax is placed on the tax roll, and if the drainage tax is not paid on or before April 1st of such year, the tax collector is required by the statute to advertise and sell at public sale the lands on which such unpaid drainage taxes were assessed."

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

"The legislature by Section 12 of Chapter 6456 of the Acts of 1913 as amended in 1917, enacted that on the day

designated in the notice of sale, the tax collector shall sell so much of each parcel of land as shall be sufficient to pay the drainage tax, costs and charges thereon, and in case there are no bidders the statute requires that the whole tract shall be bid off by the tax collector for the trustees of the Internal Improvement Fund, and shall be held by the said trustees during the period allowed in the statute for the redemption of said lands, in like manner and with like effect as lands sold to the state for non-payment of state and county taxes are held by the state as now provided by law. The land offered for sale by the tax collector shall be struck off to the person who will bid the taxes thereon, the costs and charges, for the least portion of the land."

[fol. 137] Further answering said paragraph 13 of the original bill of complaint these defendants deny that the legislature by the same section of the statute enacted that the tax collector shall require immediate payment by any person to whom any parcel of such land is struck off, but aver that such provision is contained in section 13 of said Act instead of section 12 thereof, and they further aver that said statute did not in said section, or any other section, require the Board of Commissioners of Everglades Drainage District, prior to the passage of Chapter 7305, Acts of 1917, to pay for lands bid off to them by the tax collector, and they further aver that neither Chapter 7305, Acts of 1917, nor any other Everglades Drainage District act, required the Trustees of the Internal Improvement Fund to pay for Everglades Drainage District tax certificates bid off to them by the tax collector or to pay subsequent taxes thereon.

Further answering said paragraph 13 of the original bill of complaint these defendants admit that the following allegations are substantially correct:

"The legislature by section 14 of Chapter 6456 of the Acts of 1913, as amended by the Acts of 1915, enacted that the tax collector shall give to the purchaser at such sale a certificate of such sale, which the statute requires to be in the following form:

I, ———, tax collector of the county of ———, in the State of Florida, do hereby certify that, pursuant to notice published as by law required, I offered for sale at public auction on the — day of ———, A. D., 19—, at the

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

437

38-69



Court House in said county, the lands hereinafter described, in the manner provided by law, for the amount due and unpaid for drainage tax, costs and charges on said lands for the year 19—. The said lands were knocked off and sold to ———, the same paying the amount of said unpaid drainage tax, costs and charges. And that if this certificate is not redeemed within two years from this date by payment of said amount, with interest thereon at the rate of two per centum per month from April 1st of the present year until April 1st of the following year, and eight per cent per annum thereafter, the holder thereof, or his assigns, will be entitled to receive a deed of conveyance of such lands in accordance with law, unless the holder at that time shall be the Board of Commissioners of Everglades Drainage District, in which case the title to such lands will then vest in said Board without the issuance of a deed.

[fol. 138] Said lands are described as follows, to wit: — located in — County, State of Florida."

Further answering said paragraph 13 of the original bill of complaint these defendants admit, the following allegations contained therein:

"The legislature by section 16 of Chapter 6456 of the Acts of 1913, as amended by the Acts of 1915, 1917 and 1925, enacted that when lands are bid off by the tax collector for the Trustees of the Internal Improvement Fund, the tax certificates shall be issued by the tax collector as of the date of sale in the name of the Trustees of the Internal Improvement Fund, and that, if the land is not redeemed on or before two years from the date of such certificate, title to the lands shall immediately vest in the trustees without the issuing of any deed as provided in other cases, and a certificate held by the said Trustees shall be evidence of the title of the said trustees as to the lands embraced in such certificate. After title shall have become vested in the trustees, the said Trustees may sell and convey the said lands by deed at the best price obtainable therefor, provided such price shall not be less than the amount of all drainage taxes upon the said lands which are due thereon pursuant to the provisions of the statute, together with interest, penalties and costs, and provided that no such lands shall be sold by the said Trustees until four weeks notice of the intention of such Trustees to make such

sale shall have been made in the manner required by the statute. The owner of the lands embraced in any such tax sale certificate, or his successor in title, shall at any time prior to the day of sale of such lands, have the right to redeem the same by paying the amount expressed on the face of such tax sale certificate, together with interest thereon at the rate provided in the statute, and by paying the annual taxes for each subsequent year, together with interest at the rate provided in the statute."

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein: .

"When the owner, or his successor in title, shall apply to redeem, and redeem, any lands embraced in such tax sale certificates after two years from the date of such certificates, the Trustees shall execute and deliver to the party making such redemption a quit claim deed to the land so redeemed, which deed shall be signed by the Trustees as other deeds by them are signed, and shall vest in the grantee the fee simple estate of such lands, free from all liens of any character except such liens as may exist for state and county taxes thereon, and such deeds shall be incontestable."

Further answering said paragraph 13 of the original bill of complaint these defendants admit that the proceeds of [fol. 139] the sale of such lands by the trustees of the Internal Improvement Fund become the property of such trustees as agents of the Board of Commissioners of Everglades Drainage District, as the foregoing statute provides that the proceeds from the sale of such lands shall be applied by said trustees to the payment of drainage taxes and assessments, and other obligations of the Trustees arising out of such tax sale certificates, but these defendants deny that the proceeds of the sale of such lands by the trustees of the Internal Improvement Fund become the property of such trustees as agents of the State of Florida and that the proceeds from the sale of such lands shall be applied to other obligations of the Trustees as agents of the State of Florida. These defendants aver that the agency of the Trustees for the State of Florida is separate and distinct from the agency of the Trustees for the Board of Commissioners of Everglades Drainage District, and

they aver that the payment of drainage taxes and assessments and other obligations are those relating to the subject dealt with in this section, which subject is, Everglades Drainage District tax certificates as administered by said trustees on behalf of Everglades Drainage District, but have no reference to drainage taxes and assessments and obligations of the Trustees of the Internal Improvement Fund as State agents.

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

“The legislature by Section 17, Chapter 6456, of the Acts of 1913, as amended by the Acts of 1915 and 1917, enacted that any tax certificates issued under the provisions of the statute may be redeemed by the owner of the lands covered by such certificates by paying to the clerk of the circuit court for the county wherein such lands may lie, on or before two years from the date of such certificate, the amount of the drainage tax due thereon for such year and all costs and charges as shown by said certificate, and interest on said amounts from the first day of April preceding such sale at the rates of interest provided in the statute, together with all subsequent omitted taxes imposed under authority of the statute and due and payable thereon.”

[fol. 140] Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

“The statute also provides that in the event that the tax certificate is not redeemed as provided in the statute, the holder thereof may apply to the clerk of the said Circuit Court for a deed to said lands described in said certificate. The Court shall thereupon cause a notice of such application to be published, and during such time the owner of said lands may redeem such tax certificate by paying to said Clerk the amount due, but, if at the expiration of the time fixed in the notice for the making of the deed, such certificate is not redeemed as provided in the statute, the Clerk of the Circuit Court shall execute a deed to the holder of such certificate for the lands herein described, such deed shall be in substantially the same form as now prescribed for tax deeds and shall vest in the grantee the fee simple

title to such lands therein described, free of all liens except for state and county taxes."

Further answering said paragraph 13 of the original bill of complaint these defendants admit that the statute further provides that if the certificate so redeemed is held by the trustees of the Internal Improvement Fund, the Clerk shall transmit to such trustees the amount paid on the redemption of such certificate and said Trustees shall forward to the Clerk such certificate for cancellation, but these defendants deny that the proceeds of the redemption of tax certificates held by the trustees of the Internal Improvement Fund become the property of the trustees as officers of the Internal Improvement Fund, but aver that tax certificates and the proceeds therefrom are held by the said Trustees as agents of the Board of Commissioners of Everglades Drainage District.

Further answering said paragraph 13 of the original bill of complaint these defendants admit that the said statute provides that if any tax deed, or any deeds by the Trustees of the Internal Improvement Fund, be invalid for the reason that the lands sold were not subject to drainage tax or that the tax thereon had been paid at the date of sale, the Board of Commissioners or the Trustees of the Internal Improvement Fund, as the case may be, shall on application therefor, refund to the purchaser of the land so sold, or of the land so sold to the trustees of the Internal Improvement Fund and by them sold to the purchaser, the amount of the drainage [fol. 141] taxes received in connection therewith, with interest at the rate prescribed in the statutes; that the trustees of the Internal Improvement Fund are required under the statute to refund to the purchaser who holds an invalid deed from the Trustees the amount received by the Trustees, but these defendants deny that the amount so received would have been the property of the trustees of the Internal Improvement Fund as officers of such fund, but aver that any such amounts were held by the Trustees as agents of the Board of Commissioners of Everglades Drainage District. Further answering said paragraph 13 of the original bill of complaint these defendants deny the following allegations contained therein:

"This statute not only required the trustees of the Internal Improvement Fund to bid in the lands not otherwise

sold at the tax sale, and to take a tax certificate as purchaser in the same form as any other purchaser, but it makes the proceeds of the sale or redemption of lands so bid in by the trustees the property of the trustees, just as the lands themselves were the property of the trustees, subject to the right of the redemption. If the statute had required the trustees to hold the lands in a fiduciary capacity as the representative of the Board of Commissioners, it would have required the Trustees to hold the proceeds or redemption of the lands in the same way, but as the statute required the Trustees to hold as their own the lands bid in for them at the tax sale, subject to redemption, it permits the trustees to hold the proceeds of the sale or redemption of the lands in the same way."

But these defendants aver that under the statute the trustees of the Internal Improvement Fund are not voluntary purchasers of Everglades Drainage District tax certificates and are not required to bid in lands not otherwise sold at tax sale, but that the statute requires the tax collectors of the several counties in the district to bid off such lands to the Trustees to be held by said Trustees subject to redemption of Everglades Drainage District taxes; and they aver that the Trustees of the Internal Improvement Fund do not take such tax certificates as purchasers, but merely hold said tax certificates as agents of the Board of Commissioners of Everglades Drainage District; and aver that neither the [fol. 142] proceeds of the sale, nor redemption of lands so bid in for the Trustees, become the property of the Trustees as officers of the Internal Improvement Fund; and aver that under the statute the Trustees do not hold the lands covered by drainage tax certificates, but only hold certificates on the lands, which are held in fiduciary capacity as representatives of the Board of Commissioners of Everglades Drainage District, and that the proceeds of redemption of such lands are held in the same way; and aver that only a part of the lands in Everglades Drainage District were ever in the Internal Improvement Fund, there being large areas of land in said district which were never a part of such fund.

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

"The legislature, by Section 5, Chapter 6456 of the Acts of 1913, as amended, enacted that lands within the Ever-

glades Drainage District held by the Trustees of the Internal Improvement Fund shall be subject to the drainage taxes imposed by the statute, and to all other taxes including maintenance and ad valorem taxes levied or to be levied by the Board of Commissioners of said District, and the said Trustees, in furtherance of the trusts upon which the lands are held, are authorized and empowered by the statute to pay the same out of any funds in their possession derived from the sale of lands or otherwise."

But these defendants aver that the statute, in providing that lands within the Everglades Drainage District, held by the Trustees of the Internal Improvement Fund, shall be subject to the drainage taxes imposed by the statute, referred to in the original act only to lands owned by the State of Florida and held by the Trustees of the Internal Improvement Fund as agents of the State of Florida and officers of such fund; that the said statute has been continued substantially in the same form through all of the Everglades Drainage District acts and its application is still only to the lands so owned, and since it could apply to no other lands in the original statute, it cannot apply to other lands in amending statutes in the absence of statutory provisions to the contrary.

[fol. 143] Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

"The legislature by Section 65, Chapter 4322 of the Acts of 1895, as amended, has enacted that when land is bid off by the tax collector for the State of Florida, the tax certificate shall be issued by the tax collector to the state in the name of the treasurer and if the land is not redeemed or the certificate sold by the state, the title to the land shall, at the expiration of the time for redemption, vest in the state without the issuance of any deed, as provided for in other cases, and the certificate shall be evidence of the title of the state, and none of the provisions of the statute providing for the issuing of a deed shall apply in such cases; and in all cases in which land has been sold or purchased by the state and a certificate has not been sold or the land has not been redeemed, and the time for redemption is passed, it shall not be necessary for the state to procure a deed, but the title shall be held to be in the state, and the certificate shall be

evidence of the title of the state. Under the laws of Florida, the land sold to the state for non-payment of taxes is subject to the right of redemption at any time before a tax deed is issued to a purchaser of the certificate from the State."

Further answering said paragraph 13 of the original bill of complaint these defendants deny that the lands were sold to the Trustees of the Internal Improvement Fund and are owned by the said Trustees, but aver that the lands were bid off by the tax collectors of the several counties in the Everglades Drainage District to the Trustees of the Internal Improvement Fund, and certificates on such lands are held by the said Trustees as agents of the Board of Commissioners of Everglades Drainage District subject to the right of redemption, in accordance with the provisions of the statute that such lands bid off to the Trustees during the period for redemption of said lands shall be held in like manner and with like effect as lands sold to the State for non-payment of State and County taxes are held by the State; that the state law does not require the State to pay for certificates bid off in its name; that Chapter 6456 did not require the Board of Commissioners of Everglades Drainage District to pay for certificates bid off in its name; that Chapter 7305, [fol. 144] amending Section 12 of Chapter 6456, by merely changing the name from that of the Drainage Board to that of the Trustees Internal Improvement Fund does not require the Trustees to pay for certificates bid off in their name; that the mere change of name did not and could not effect a change of duties; that the amending act provided for a change of agency to carry out the same duties; that the amending act imposed no new duties upon the Trustees of the Internal Improvement Fund which had not theretofore been imposed upon the Board of Commissioners of Everglades Drainage District, and since it imposed no new duties upon the Trustees in reference to paying for the certificates, it did not impose upon the Trustees any duty to pay subsequent drainage taxes upon lands covered by said certificates.

Further answering said paragraph 13 of the original bill of complaint these defendants admit that the legislature by Section 1 of Chapter 6158 of the Acts of 1911, provided that the tax assessors in making up their assessment rolls shall place thereon the lands certified to them by the State Com-

troller as having been sold to the State for taxes, and shall enter their valuations of the same on the tax rolls, and shall mark against such lands on their tax rolls the words "State Tax Certificate"; that the amount of taxes on such lands shall not be extended on the tax roll but when said lands are redeemed from the tax certificate under which they were sold the person redeeming shall also pay the taxes for the years in which the said lands are marked as aforesaid, at the rate of taxation levied thereon, in those years respectively, together with interest as provided by law, but these defendants deny that by such statute it was enacted that the State of Florida should not be required to pay taxes on lands bid off to the State for non-payment of taxes, but aver that the State never was required to pay taxes on lands bid off to the State, [fol. 145] and that this provision of the statute was merely to provide for a uniform clerical procedure by the tax assessors in reference to the lands covered by state and county tax certificates in the interest of efficiency and economy.

Further answering said paragraph 13 of the original bill of complaint these defendants admit that the taxes for which the lands are bid in to the State under the foregoing statute are general taxes, but aver that they are without knowledge as to the opinion or views of complainants expressed, to the effect that the legislature considered it prudent to include in the statute a definite expressed provision that while the lands bid off to the State, and of which the State becomes the owner should be included in the tax roll, the amount of taxes should not be extended on the roll, and the State should not be required on State owned lands to pay general taxes itself.

Further answering said paragraph 13 of the original bill of complaint these defendants admit that in the statute providing for the levy of drainage taxes in the Everglades Drainage District, which taxes are special assessments, it is provided that the Board of Commissioners shall include in the tax lists, which they are required to prepare, all lands in the district, and the tax assessors are required by the statute to include within the tax roll all lands of the district and to extend against those lands the rate of drainage tax thereon provided in the statute; but these defendants aver that Section 10 of the original act, Chapter 6456, (now section 1539 Compiled General Laws) as amended by Chapter

6957, Acts of 1915, and Chapter 7305, Acts of 1917, provides as follows:

"But no lands, which have previously been sold for the non-payment of such tax or assessment and for which unredeemed tax certificates are outstanding, shall be again advertised and sold for the non-payment of such tax, but the tax or assessment for each subsequent year shall continue as a lien upon said land",

all of which is in harmony with and similar to like procedure with reference to state and county tax certificates under the [fol. 146] provisions of Section 924, Compiled General Laws of Florida; and these defendants admit the following allegations contained therein:

"The Trustees of the Internal Improvement Fund, which as hereinbefore set forth, are authorized and empowered to pay the drainage taxes on all lands held by them in the district;"

that they aver that the lands held by them in the district have reference only to lands owned by the State of Florida and held by the Trustees of the Internal Improvement Fund, but not the lands covered by Everglades Drainage District tax certificates held by the Trustees. These defendants deny that the Trustees "are not in a position, as owners of such lands, similar to the State as the owner of lands bid off to it, as the Trustees are also the owners of the proceeds of sale or redemption of such lands, which they may use to pay their own obligations, and any profits which are realized by the Trustees on the sale of the lands are the profits of the Trustees." But these defendants aver that the Trustees as agents of the Board of Commissioners of Everglades Drainage District hold Everglades Drainage District tax certificates and the proceeds of sale or redemption of lands covered by such certificates on behalf of Everglades Drainage District in the same way as the State Treasurer, as agent of the State, holds state and county tax certificates for the State. These defendants are without knowledge as to the allegation, "that at the suggestion of the board of Commissioners and in order to make possible the sale of additional bonds of such board, the legislature enacted a provision of the statute in which the lands offered by the tax collector for sale and not otherwise purchased, should be bid in for

the trustees." These defendants deny that it was the intention of the legislature that to the extent that the assets of the Trustees were sufficient for that purpose, default in the payment of drainage taxes should become impossible. But these defendants aver that if it was the purpose of the act of the legislature to make default in payment of drainage [fol. 147] taxes impossible by applying the assets of the Internal Improvement Fund to payment of taxes which were delinquent on other lands, the result would have been a practical guarantee on the part of the Trustees of tax payments and the virtual underwriting of Everglades Drainage District bonds on the part of the State in as much as the assets held in trust by the Trustees of the Internal Improvement Fund are state assets.

Further answering said paragraph 13 of the original bill of complaint these defendants deny that "the Trustees of the Internal Improvement Fund by action taken at meetings of the Trustees, and by their conduct in paying for the tax certificates representing lands bid in for them, and by paying the drainage taxes thereon, have fully recognized their obligation under the statutes hereinbefore set forth, to pay for such tax sale certificates and to pay the drainage taxes on the lands represented thereby," and these defendants aver that payment made by them for certificates bid off by the tax collector to them and subsequent drainage taxes on lands covered by such tax certificates was not by reason of any statutory obligation so to do, and aver that there was and is no such statutory obligation.

Further answering said paragraph 13 of the original bill of complaint these defendants admit that in the minutes of a meeting of the Trustees of the Internal Improvement Fund, held on March 10, 1924, that a certain preamble and resolution recited in the bill of complaint were adopted, but they deny that by the adoption of said preamble and resolution the Trustees conceded that they were required by statute to pay for such tax sale certificates; and these defendants aver that neither the said preamble nor the said resolution contains an affirmative statement of any holding by the Trustees to the effect that the law contemplates and provides that the amounts involved in such drainage tax certificates should be paid by the Trustees after such certificates [fol. 148] have ripened into title, or at any other time, but aver that said preamble contains only a negative statement

of the holding of the Trustees "that the amounts involved in such drainage tax certificates *should not be paid* by the Trustees until such certificates have ripened into title in said Trustees, such ripening into title being two years from the date of such tax sale," and these defendants aver that the said resolution providing for payments by the Trustees is qualified by the express language of the resolution, that such payments should be made "out of any funds available", and these defendants aver that neither by said preamble nor said resolution did the Trustees admit that there existed any statutory obligation upon the Trustees as officers of the Internal Improvement Fund to pay for said drainage tax certificates or the subsequent taxes thereon, because there was and is no statute imposing such obligation; and these defendants aver that the Trustees of the Internal Improvement Fund as officers of the Internal Improvement Fund could not obligate themselves to pay for such tax certificates or subsequent taxes thereon, because no law authorized them to assume such obligation.

Further answering said paragraph 13 of the original bill of complaint these defendants admit that Spitzer, Rorick and Company, under date of March 15, 1924, addressed to the Trustees of the Internal Improvement Fund the letter recited in the bill of complaint, but these defendants deny that such letter was binding upon the Trustees of the Internal Improvement Fund, and deny that neither the resolution referred to in the letter, or the letter itself, would or could "constitute an agreement between us and between your board and the future holders of said bonds"; and these defendants aver that no bonds issued by the Board of Commissioners of Everglades Drainage District contained any such, or any other agreement, upon the part of the Trustees of the Internal Improvement Fund.

[fol. 149] Further answering said paragraph 13 of the original bill of complaint these defendants admit that the minutes of the Trustees of the Internal Improvement Fund, of a meeting held on June 16, 1925, contains the alleged agreement as recited in the bill of complaint, but these defendants aver that neither the Everglades Drainage District statutes, nor any other statutes, required or obligated the Trustees to pay for such certificates and that in the absence of statutory obligation or authorization the Trustees them-

selves could not create such obligation to pay; and these defendants aver that the proposition of the same date, to-wit: June 15, 1925, addressed to the Honorable Board of Commissioners of Everglades Drainage District, as referred to in said alleged agreement, appears in the minutes of the Board of Commissioners of Everglades Drainage District under date of June 16, 1925, containing the following language without reference to any refunding bonds:

* * * "And in consideration of the trustees of the internal improvement fund agreeing this date, that from now on it will promptly pay at Everglades Drainage Tax Sales, in cash, for all lands bid in or automatically struck off to said Trustees at said Tax Sale instead of waiting until two years thereafter, as heretofore, and in consideration of your Board agreeing that no additional part of said \$3,500,000.00 bonds shall be issued prior to January 1, 1929, without our written consent, we hereby agree to now purchase from your Board \$1,230,000.00 out of said \$3,500,000.00 recently authorized, said bonds to bear date of January 1, 1926, unless some other date is hereafter mutually agreed upon, and to bear interest at 5% per annum, payable semi-annually in gold coin of its present standard of weight and fineness, both principal and interest to be payable at the National Park Bank in the City of New York, unless some other New York Bank shall hereafter be mutually agreed upon, and said bonds shall be in denomination of \$1,000.00 each and shall mature serially in 10 to 30 years from their date in approximately equal instalments, unless some different maturities for said bonds shall hereafter be mutually agreed upon. Said bonds are to be issued and delivered to us in New York prior to February 1st, 1926, and we agree to pay you therefor an amount equal to a 5-5/8% basis figured on the average maturities of said bonds from their date."

and these defendants aver that the proposal from Spitzer, [Vol. 150] Rorick and Company to the Trustees under date of June 15, 1925, and the proposal to Everglades Drainage District under same date, must for correct understanding be taken together; and these defendants aver that the \$1,230,000.00 of new bonds mentioned in said letter to the Board of Commissioners of Everglades Drainage District, were never taken up and paid for; and these defendants

aver that there was but one consideration moving the Trustees to the acceptance of the proposal from Spitzer, Rorick and Company, dated June 15, 1925 as above, and that consideration was the purchase by Spitzer, Rorick and Company of \$1,250,000.00 of new bonds authorized by the Act of 1923; and these defendants aver that no part of said bonds were purchased by Spitzer, Rorick and Company or any other bond purchaser; that the failure of said Spitzer, Rorick and Company to purchase said bonds removed the only consideration actuating the Trustees toward the acceptance of said proposal from said Spitzer, Rorick and Company; that even though said contract between Spitzer, Rorick and Company and Board of Commissioners of Everglades Drainage District failed in respect to the said \$1,250,000.00, the Trustees did pay for Everglades Drainage District tax certificates bid off to them by the tax collector and subsequent drainage taxes on lands covered by said certificates in anticipation of the carrying out to completion of said contract between said Spitzer, Rorick and Company and the Board of Commissioners of Everglades Drainage District; that the Trustees discontinued the payment for certificates and taxes thereon only upon complete failure of contract for the sale of said bonds by the said Spitzer, Rorick and Company and Board of Commissioners of Everglades Drainage District, and upon the depletion of funds of the Trustees of the Internal Improvement Fund available for such payments; and these defendants aver that the issuance of refunding bonds was no consideration moving the Trustees to the acceptance of the said proposal, for the reason that [fol. 151] such refunding bonds were merely to be substituted for other bonds then outstanding and would yield no revenue for the prosecution of drainage work.

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

"That the Trustees of the Internal Improvement Fund have paid for all tax sale certificates bid in for them to and including the sales made for the 1927 drainage taxes, and have paid the drainage taxes on the lands represented by such certificates, but that the Trustees have not paid for the tax sale certificates representing lands bid in for them on sale for the 1928 drainage taxes and subsequent drainage taxes."

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

"That the lands in Everglades Drainage District bid in for the trustees of the Internal Improvement Fund, and which have neither been sold by such trustees nor redeemed by the former owners, represent a substantial part of all the lands in said drainage district, and that a substantial part of the lands thus bid in for the trustees have been held by such trustees for a period of more than two years from the date at which such lands were so bid in."

Further answering said paragraph 13 of the original bill of complaint these defendants deny the following allegations contained therein:

"That in 1929 the Board of Commissioners of Everglades Drainage District, being composed of the same public officials as constitute the trustees of the Internal Improvement Fund, for the purpose of extinguishing or reducing the drainage taxes levied by the statutes under which the bonds of the district had been issued, and which taxes had been levied for the purpose of paying the principal and interest of said bonds, recommended to the legislature that a statute or statutes be enacted by the legislature which would reduce or extinguish such drainage taxes, which constitute a part of the bond contract, effect of such a statute would be to the security of such bonds and made it practically certain that the principal and interest of such bonds would not be paid."

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

[fol. 152] "The legislature by section 6 of Chapter 13633 of the Acts of 1929, which act was approved by the governor of the state, who at that time was chairman of the Board of Commissioners of Everglades Drainage District and of the trustees of the Internal Improvement Fund, enacted that, in lieu and instead of all other acreage taxes or assessments on lands within Everglades Drainage District authorized at the time of the passage of said Act, annual assessments of drainage taxes are levied and imposed by said Act of 1929

upon all said lands within said Everglades Drainage District for the year 1929 and subsequent years as follows:

In Zone 1, \$1.30 per acre for the years 1929 and 1930, and \$1.45 per acre thereafter; in Zone 2, 95¢ per acre for the years 1929 and 1930, and \$1.10 per acre for each year thereafter; in zone 3, 80¢ per acre for the years 1929 and 1930, and 90¢ per acre for each year thereafter; in zone 4, 65¢ per acre for the years 1929 and 1930, and 75¢ per acre for each year thereafter; in zone 4a, 60¢ per acre for the years 1929 and 1930, and 75¢ per acre for each year thereafter; in zone 5, 50¢ per acre for the years 1929 and 1930, and 75¢ per acre thereafter; in zone 5a, 50¢ per acre for the years 1929 and 1930 and 75¢ per acre for each year thereafter; in zone 5b, 10¢ per acre for each of the years 1929 and 1930, and 15¢ per acre for each year thereafter. Upon all other lands within said drainage district, except the lands which are exempt from acreage tax under the provision of the prior acts, a tax of 8¢ per acre is levied for each of the years 1929 and 1930, and a tax of 9¢ per acre for each year thereafter."

but these defendants deny that the rates so recited in said allegations were the rates of taxation as defined in the statutes under which the bonds were issued, but aver that said rates as recited were and are according to Chapter 13633 Acts of 1929, instead of prior statutes under which the bonds were issued.

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

"In section 6 of the aforesaid Act of 1929, it is provided that there shall be deducted from the taxes levied by said Act of 1929, as to each acre of land within the said district in each year, an amount equal to the sum of money levied for each year upon such land, as an acreage tax, under the provisions of the Act of 1929, creating the Okeechobee Flood Control District, and such deduction shall be made by the Board of Commissioners at the time Everglades Drainage District taxes are certified to the several tax assessors."

[fol. 153] Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

"By such Act of 1929 it was further provided that the Board of Commissioners of Everglades Drainage District

shall, as soon as practicable after the passage and approval of said Act, certify to the tax assessor of each county containing lands within said drainage district, the acreage taxes levied upon the said lands in accordance with the provisions of the Act of 1929, and that each tax assessor shall enter upon the tax roll for the year 1929, the amount of taxes so certified, in lieu of other acreage taxes certified by said Board to the said tax assessor for that year."

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

"By said Act of 1929 it is further provided that the Board of Commissioners of Everglades Drainage District shall have the right to reduce the taxes levied by that Act in each of the zones of the district proportionately, to the extent of not more than 25% of the levies provided for in said Act, and from time to time to readjust such levies on each of said zones and lands proportionately, not to exceed the amount per acre levied by the Act of 1929 in any of such areas."

Further answering said paragraph 13 of the original bill of complaint these defendants admit the following allegations contained therein:

"By section 26 of the said Act of 1929, the legislature enacted that for the purpose of funding, retiring and paying obligations then owing by said Everglades Drainage District, which are not evidenced by bonds, and for the purposes of the district generally, the Board of Commissioners of Everglades Drainage District is authorized to issue and sell bonds in an amount not to exceed \$3,000,000.00 in addition to all bonds actually issued and outstanding,"

and with reference to the following allegation contained therein; to-wit:

"no levy is made of additional drainage taxes to take care of requirements of the bonds authorized by that section,"

these defendants aver that it is not shown that the taxes levied under this Chapter were insufficient for the bonds previously issued together with bonds authorized by said section.

[fol. 154] Further answering said paragraph 13 of the original bill of complaint these defendants admit that "by the Act of 1929, the legislature attempted to repeal the taxes levied by the statutes under which the bonds of the Board of Commissioners were issued, and for the payment of which the taxes were levied at the rates set forth in the statute, and the legislature attempted to substitute therefor taxes at substantially lower rates," but these defendants aver that in such allegations it is not shown that the substituted taxes were insufficient to take care of prior bonds, together with new bonds authorized.

14

Answering paragraph 14 of the original bill of complaint these defendants say that they are without knowledge as to the allegations contained therein.

15

Answering paragraph 15 of the original bill of complaint these defendants admit the allegations contained therein.

16

Answering paragraph 16 of the original bill of complaint these defendants say that they are without knowledge as to the following allegations contained therein:

"Under the provisions of the statutes under which the bonds of Everglades Drainage District were issued, as hereinbefore set forth, the treasurer of the state of Florida, as custodian of the funds of the district was directed and commanded as such custodian to pay into a sinking fund for the payment of the principal of said bonds, an amount not less than 2% of the principal of said bonds outstanding; the state treasurer has not complied with the requirements of said statute in making said payments into the sinking fund, and the complainants are informed and believe, and therefore allege that although bonds of said district have been outstanding for many years, there are at present no funds in said sinking fund. While failing to maintain the sinking fund as required by the statute, the state treasurer has applied the funds of the district, in his hands as custodian, to other purposes. The Board of Commissioners have become indebted to the Arundel Corporation, a corporation of the state of Maryland, approximately in the sum of \$1,800,000,

[fol. 155] which indebtedness is not represented by bonds of Everglades Drainage District, and notwithstanding the pledging of the funds of the district for the payment of the outstanding bonds and the requirement that a sinking fund be maintained, the state treasurer at a time when there were no funds in the sinking fund, and he did not have on hand sufficient funds to pay in full the principal and interest of the bonds which fell due on January 1st, 1931, and when he knew that there was no reasonable expectation of receiving such funds in time to pay such bond obligation, made payments on account of the indebtedness of the Arundel Corporation, and made payments for various other purposes. At the time at which the treasurer of the state made such payments he expected and intended that the Board of Commissioners would not pay the principal and interest of the outstanding bonds which were about to become due on January 1st, 1931, and in fact the said Board did not pay the principal and interest which became due on that date.

The complainants are informed and believe, and therefore allege that the Board of Commissioners of Everglades Drainage District, and the treasurer of the state, as custodian of the funds of such district, intend that no funds of said district shall be applied to the payment of the principal or interest on the outstanding bonds of the district as the same became due, except and unless the holders of such bonds shall consent to such reduction in the principal and interest of such bonds, and to the imposing of such conditions concerning the deferment of payment and the amount of payment as the said Board of Commissioners and said treasurer in their unrestricted discretion shall see fit to impose. The representative of the said Drainage District has stated very frankly to these complainants and their representatives the attitude of the said Board of Commissioners."

Further answering said paragraph 16 of the original bill of complaint, with reference to the following allegation to-wit:

"The complainants are informed and believe, and therefore allege, that the plain truth is that the trustees of the Internal Improvement Fund, in defaulting on their obligation to pay taxes, which was one of the vital inducements to the purchase of the bonds by the investing public, rely on the fact that the public officials who are the trustees of

the Internal Improvement Fund are also members of the Board of Commissioners of Everglades Drainage District, and on the fact that the Board of Commissioners are not disposed to enforce the trustees to discharge the obligation into which they entered for the benefit of the bondholder. The complainants are informed and believe, and therefore allege that the Trustees of the Internal Improvement Fund are indebted to the Board of Commissioners for the amount of the face of the tax sales certificates bid in for the trustees, and for the subsequent drainage taxes on the lands covered [fol. 156] by such certificates, and that the Board of Commissioners would long since have secured judgment against the trustees for the amount of such obligation but for the fact that the Board of Commissioners are willing that the Trustees should not pay such drainage taxes."

these defendants deny that the Trustees defaulted in payment of Everglades Drainage District taxes on lands owned by the State of Florida and held by the Trustees of the Internal Improvement Fund as officers of the Internal Improvement Fund, and also deny that the Trustees of the Internal Improvement Fund defaulted on any obligation to pay for Everglades Drainage District tax certificates bid off to them by the tax collector, or to pay subsequent taxes thereon, for the reason that there was and is no obligation upon the Trustees, by statute or otherwise, to pay for such certificates or subsequent taxes thereon; and these defendants deny that the Trustees of the Internal Improvement Fund are indebted to the Board of Commissioners of Everglades Drainage District for the amount of the face of the tax sales certificates bid in for the trustees and for the subsequent drainage taxes on the lands covered by such certificates; and these defendants deny that there can be any judgment secured against the Trustees of the Internal Improvement Fund for the amount of such tax certificates and/or the subsequent taxes on lands covered by such certificates, for the reason that there is no obligation upon the Trustees Internal Improvement Fund to make such payments.

Further answering said paragraph 16 of the original bill of complaint, with reference to the following allegations contained therein, to-wit:

"The complainants are informed and believe, and therefore allege, that the Board of Commissioners are willing

that other land owners in the district should not pay their taxes, and said board openly takes a position that no means should be taken by them to collect drainage taxes until the bondholders have reduced their obligations and deferred their payments to the extent required by the board. Complainants are informed and believe, and therefore allege, that the Board of Commissioners have encouraged land- [fol. 157] owners in the district in their attitude in refusing to pay the drainage taxes and have encouraged such land owners in the hope that if the taxes are not paid promptly, they will be substantially reduced and the bond indebtedness of the district will likewise be substantially reduced. To this end and for this purpose the board of Commissioners pretend that the trustees of the Internal Improvement Fund hold the lands bid in by them merely as trustees for the district, that the trustees are not required to pay for the tax certificates at any time or to pay any drainage taxes on such lands, that all payments of drainage taxes made by the trustees were voluntary and without legal requirement and that the landowners cannot be required to pay their taxes for the reason that the lands bid in for the trustees are held by them for the district, cannot be sold for cash, and the possession of the land by its owner cannot be disturbed, notwithstanding the non-payment of the taxes and the ownership of the land by the trustees, and the land owner cannot be required to pay for the use of the land, notwithstanding its use may be profitable to him. In other words, the bonds were sold by the Board of Commissioners as a flagrant means of deceiving and defrauding the investing public, who purchased the bonds in good faith and paid therefor in reliance upon the obligations having been for a period of time performed, but are now renounced with the approval of the Board of Commissioners."

these defendants deny non-payment of taxes by the Trustees of the Internal Improvement Fund on lands owned by the State of Florida and held by the Trustees as officers of the Internal Improvement Fund; and these defendants deny the ownership by the Trustees of the Internal Improvement Fund, as officers of the Internal Improvement Fund, of lands bid off to the Trustees by the tax collectors within the Everglades Drainage District, but aver that the Trustees hold such tax certificates as agents only for Everglades

Drainage District, in the same manner as the State Treasurer holds State and County tax certificates as agent of the State; and these defendants deny any obligation resting upon the Trustees of the Internal Improvement Fund, either statutory or otherwise, to pay for Everglades Drainage District tax certificates bid off to them by the tax collectors within the district, or to pay subsequent taxes on lands covered thereby; and these defendants say that they are without knowledge as to the other allegations so recited above.

{fol. 158}

17

Answering paragraph 17 of the original bill of complaint these defendants say that they are without knowledge as to the allegations contained therein.

Particularly answering the supplemental bill of complaint filed herein these defendants say:

1

Answering paragraph 1 of the supplemental bill of complaint these defendants admit the allegations contained therein.

2

Answering paragraph 2 of the supplemental bill of complaint these defendants say that they are without knowledge as to the allegations contained therein.

3

Answering paragraph 3 of the supplemental bill of complaint these defendants admit the allegations contained therein, except that part with reference to the published notice of the introduction in the legislature of the bill which became such statute, and with reference thereto these defendants say that they are without knowledge.

4

Answering paragraph 4 of the supplemental bill of complaint these defendants admit that by the Act of May 20, 1931, various changes were made in the statutes pertaining to Everglades Drainage District; but these defendants say that they are without knowledge as to the allegations con-

tained in sub-paragraphs (1), (2) and (3) of said paragraph 4, and are without knowledge as to whether under the allegations contained in said sub-paragraphs the rights of plaintiffs, as set forth in the original bill, were further invaded and the obligation of their bonds, or legislative contract, under which such bonds were issued, were impaired, or further impaired.

[fol. 159] Answering sub-paragraph (4) of the said paragraph 4 of the supplemental bill of complaint these defendants admit the following allegations contained therein:

"By Section 56 (c) of said Act of May 20, 1931, the legislature enacted that at the time named in the statute the tax collector of the county should offer for sale separately all lands delinquent for the payment of drainage taxes and that such lands should be struck off to the person who would pay the drainage taxes, costs and charges, and that if there should be no bidder for any tract of land offered for sale for drainage taxes the whole tract should be bid off by the tax collector for the Board of Commissioners of Everglades Drainage District. By the statute under which the said bonds were issued (Section 12 of Chapter 6456 of the Acts of 1913, as amended in 1917) as set forth in paragraph 13 of the bill of complaint, the tax collector was required, if there was no bidder for any tract of land offered for sale for drainage taxes, to bid off the land so offered for sale for the Trustees of the Internal Improvement Fund of the State of Florida,"

but these defendants deny the following allegations contained therein, referring to the Trustees of the Internal Improvement Fund, to-wit:

"who were and are required by the statute to pay therefor and to pay all subsequent drainage taxes thereon."

and with reference to the remaining allegations contained in said sub-paragraph these defendants are without knowledge, except the allegation that there was an obligation upon the Trustees to pay for the lands bid off to them and to pay subsequent taxes thereon, which allegation these defendants deny; and these defendants say that they are without knowledge of any invasion of the rights of the plaintiffs or any impairment, or further impairment, of the obligation of

their bonds and the legislative contract under which they were issued, in and by the allegations contained in said sub-paragraph.

Answering sub-paragraph (5) of said paragraph 4 of the supplemental bill of complaint these defendants admit the following allegations contained therein, to-wit:

[fol. 160] "By Section 65 (a) of said Act of May 20, 1931, it is recited and declared that all tax sales certificates in the hands of the Trustees of the Internal Improvement Fund, which tax sales certificates were issued to the Trustees of the Internal Improvement Fund in pursuance of the sale of lands for the non-payment of taxes levied by the statute, are held by such Trustees of the Internal Improvement Fund in trust for the defendant Board of Commissioners of Everglades Drainage District, and that the beneficial interest in and title to said tax sales certificates are vested in said Board of Commissioners, subject to the right of the Trustees of the Internal Improvement Fund to be repaid by said Board of Commissioners any sums of money which may have been advanced by said Trustees of the Internal Improvement Fund for the account of said Everglades Drainage District."

but these defendants say that they are without knowledge as to the remaining allegations contained in said sub-paragraph (5) of said paragraph 4 of the supplemental bill of complaint; and these defendants say that they are without knowledge as to any invasion of the rights of the plaintiffs or any impairment, or further impairment, of the obligation of their bonds and the legislative contract under which they were issued in and by the allegations contained in said sub-paragraph.

Answering sub-paragraph (6) of the said paragraph 4 of the supplemental bill of complaint these defendants admit the allegations contained in the first paragraph thereof, but these defendants are without knowledge as to the second paragraph thereof, except with reference to the allegation of an obligation resting upon the Trustees of the Internal Improvement Fund, under then existing statutes, to pay in cash for the lands bid off to them by the tax collectors and to pay the drainage taxes which should become due on said lands while held by the said Trustees, which allegation these defendants deny; and these defendants say that they are without knowledge as to any invasion of the rights

of the plaintiffs of any impairment, or further impairment, of the obligation of their bonds and the legislative contract under which they were issued, in and by the allegations contained in said sub-paragraph.

[fol. 161] Answering sub-paragraph (7) of said paragraph 4 of the supplemental bill of complaint these defendants admit the allegations contained therein, but say that they are without knowledge as to any invasion of the rights of the plaintiffs or any impairment, or further impairment, of the obligation of their bonds and the legislative contract under which they were issued, in and by the allegations contained in said sub-paragraph.

Answering sub-paragraph (8) of said paragraph 4 of the supplemental bill of complaint these defendants admit the allegations contained therein, but say that they are without knowledge as to any invasion of the rights of the plaintiffs, or any impairment or further impairment of the obligation of their bonds and the legislative contract under which they were issued, in and by the allegations contained in said sub-paragraph.

Answering sub-paragraph (9) of said paragraph 4 of the supplemental bill of complaint these defendants admit the allegations contained therein, but say that they are without knowledge of any invasion of the rights of the plaintiffs, or any impairment or further impairment of the obligation of their bonds and the legislative contract under which they were issued, in and by the allegations contained in said sub-paragraph.

Answering sub-paragraph (10) of said paragraph 4 of the supplemental bill of complaint these defendants admit the allegations contained in the first sentence thereof, but these defendants are without knowledge as to the allegations contained in the second or last sentence thereof; and these defendants say that they are without knowledge of any invasion of the rights of the plaintiffs, or any impairment or further impairment of the obligations of their bonds and the legislative contract under which they were issued, in and by the allegations contained in said sub-paragraph.

Answering sub-paragraph (11) of said paragraph 4 of the [fol. 162] supplemental bill of complaint these defendants admit the allegations contained therein, but these defendants say that they are without knowledge of any invasion of the rights of the plaintiffs, or any impairment or further impairment of the obligation of their bonds and the legisla-

tive contract under which they were issued, in and by the allegations contained in said sub-paragraph.

Further and more particularly answering both the original and supplemental bills of complaint herein, these defendants say:

1

That the Trustees of the Internal Improvement Fund are not obligated by Everglades Drainage District statutes, nor any other statutes, to pay for Everglades Drainage District tax certificates bid off to them by the tax collectors in the several counties of the District, nor to pay subsequent taxes on lands covered thereby.

2

That the Everglades Drainage District statutes not only fail to show any obligation upon the Trustees of the Internal Improvement Fund to make such payments as above mentioned, but positively show that there is no such obligation upon the Trustees to make such payments. The following Everglades Drainage District statutes are referred to as evidence that no such obligation rests upon the Trustees of the Internal Improvement Fund:

Section 5 of the original Everglades Drainage District Act, Chapter 6456 of 1913, now Section 1534 Compiled General Laws, provides that "the lands within the Everglades Drainage District held by the Trustees of the Internal Improvement Fund shall be subject to the taxes hereby imposed", which language contained in the original Everglades Drainage District Act still remains in force, and these defendants say that such language appearing in the [fol. 163] Everglades Drainage District act must be construed as having reference only to lands owned by the State of Florida in said district and held by the Trustees of the Internal Improvement Fund as officers of the Internal Improvement Fund; and these defendants say that such provision in the statute could not at the time of the adoption of said original statute apply to lands held by the Trustees of the Internal Improvement Fund, as agents of the Board of Commissioners of Everglades Drainage District, for the reason that said statute did not provide for lands upon which there were no other bidders to be bid off by the tax collectors of the several counties in the district to the

Trustees of the Internal Improvement Fund, but provided that the same should be bid off to the Board of Commissioners of Everglades Drainage District; and these defendants say that in the passage of Chapter 7305, Acts of 1917, in which the name of the Trustees Internal Improvement Fund was substituted for the name of Board of Commissioners of Everglades Drainage District, to whom lands should be bid off by the tax collectors upon failure of voluntary purchasers for such lands, in the absence of specific legislative declaration, such certificated lands held by the Trustees as agents of the Board of Commissioners of Everglades Drainage District could not be considered as coming within the provisions of the above mentioned statute providing for payment by the Trustees of the Internal Improvement Fund of Everglades Drainage District taxes upon lands held by the Trustees.

Section 8 of the original statute, Chapter 6456 of 1913, as amended by Chapter 7863, Acts of 1919, contains among other things the following language: "Except as is herein specifically provided all laws as relating to state and county taxes in this State are hereby made applicable to the Everglades Drainage District." And these defendants say that [fol. 164] no State laws require the State or the State Treasurer, to whom state and county tax certificates are bid off, to pay for said tax certificates or subsequent taxes thereon; and further say that it is not specifically provided in the Everglades Drainage District statutes for the Trustees of the Internal Improvement Fund to pay for Everglades Drainage District tax certificates bid off to them, nor to pay for subsequent taxes on lands covered thereby, and in the absence of such specific provision in the Everglades Act the procedure specified in the State Act, in reference to state and county tax certificates, must prevail, to-wit: that no payment shall be required.

Section 10 of Chapter 6456, as amended by Chapter 7305, Acts of 1917, now Section 1539 Compiled General Laws, provides, among other things, that the tax or assessment for each subsequent year shall continue as a lien upon said land, superior in dignity to all other liens except the lien for state and county taxes, and when title to lands covered by Everglades Drainage District tax certificates vested in the Trustees of the Internal Improvement Fund, as agents for the Board of Commissioners of Everglades Drainage District, such title consisted of only such as was represented by the

lien for Everglades Drainage District taxes but could not complete title for the reason that vesting of complete title would have had the effect of extinguishing the lien for other taxes, including state and county and sub-drainage district taxes, and such title as represented the equity of Everglades Drainage District in said lands was further subject to the condition of the right of redemption.

Section 12 of Chapter 6456, as amended by Chapter 7305 of the Acts of 1917, now Section 1541 Compiled General Laws, provides among other things, with reference to lands covered by Everglades Drainage District tax certificates bid off by the tax collectors to the Trustees, "and shall be held by said Trustees during the period herein allowed for the redemption of said lands in like manner and with like effect as lands sold to the State for nonpayment of state and [fol. 165] county taxes are held by the State as now provided by law," and that manner is that the certificates are held by the State without the payment by the State therefor, nor the subsequent taxes on lands covered by said certificates, subject to the right of redemption, and the Trustees of the Internal Improvement Fund in holding Everglades Drainage District tax certificates in the same manner as the State holds state and county certificates, holds them without payment therefor nor the payment of subsequent taxes on lands covered thereby, subject also to the right of redemption, all in the language of the Act; "in like manner and with like effect as lands sold to the State for non-payment of state and county taxes."

Section 13 of Chapter 6456, which has never been amended, but now appears as Section 1542 of the Compiled General Laws, provides as follows: "The tax collector shall require immediate payment by any person to whom any parcel of such land may be struck off and in all cases when the payment is not made within one hour he may declare the bid cancelled and sell the land again on the same day or the day following, and any person so neglecting or refusing to pay any bid made by him shall not be entitled, after such neglect, to have any bid made by him received by the tax collector during such sale". To further disclose the similarity between the Everglades Act and the State law, a comparison of Section 13 of Chapter 6456, with Section 975 Compiled General Laws, with reference to State and county taxes, will show that the language of these two sections are identical, except as follows: In the Everglades

Act the word "when" appears in place of the word "where" in the State law. The words "within one hour" appear in the Everglades Act, instead of the words "within twenty-four hours", which appear in the State law. The Everglades Act has the words, "same day or the day following", in place of "the following day", as appears in the State law. In all other respects the Everglades Act and [fol. 166] the State law are identical. This being so, no change of duties as between the Trustees of the Internal Improvement Fund and the Board of Commissioners of Everglades Drainage District can arise under this section by merely a change from the name "Board of Commissioners of Everglades Drainage District" to the name "Trustees of the Internal Improvement Fund" in Section 12 of the Everglades Act. Under the State law the tax collector required immediate payment from any person to whom the land was struck off, but if the lands were bid in by the tax collector in the name of the State, the State was not required to pay therefor nor did the State do so. The same procedure exactly was followed in connection with Everglades Drainage District tax certificates. The person bidding on the land was required to pay within the hour, but if the land was bid off by the tax collector in the name of the Board of Commissioners of Everglades Drainage District, the Drainage Board, like the State, was not required to pay for said certificates. Through the amendment to Section 12 of Chapter 6456, which amendment substituted the name "Trustees of the Internal Improvement Fund" in place of the name "Board of Commissioners of Everglades Drainage District", the Trustees likewise were not required to pay for said certificates bid off to them by the tax collector. The reason the State was not required to pay for certificates bid off to it is clear. The Board of Commissioners of Everglades Drainage District did not pay for the said certificates for the same reason and that same reason applies to the Trustees of the Internal Improvement Fund when certificates were bid off by the tax collector for them as agents for Board of Commissioners of Everglades Drainage District. A further comparison of Everglades Drainage District laws in respect to drainage tax certificates with State laws in reference to state and county tax certificates will disclose continuity of similarity throughout, and that growing out of the Everglades laws and of the State laws the duties developing upon the Trustees of

[fol. 167] the Internal Improvement Fund, with respect to Everglades Drainage District tax certificates, were the same as the duties devolving upon the State in reference to state and county tax certificates, in neither of which was there any requirement to pay for tax certificates or the subsequent taxes on lands covered thereby.

Section 15 of Chapter 6456, and this section as amended in 1915, now Section 1545 of the Compiled General Laws, is similar to Section 976 of the Compiled General Laws with reference to the state and county tax lists. Both the Everglades Act and the State Act relate to the making out of lists by the tax collectors, the disposition of said lists, the form of certificates and the fees to be received by the clerks of the courts therefor, and in the Everglades Act additional provision in reference to compensation of tax assessors and of tax collectors. The State law makes no reference to any requirement which would lead to the assumption that the State must pay for such certificates bid off by the tax collector in its name, and the same is true in the Everglades Act with reference to the Board of Commissioners of Everglades Drainage District and to the Trustees of the Internal Improvement Fund.

By Section 16 of Chapter 6456, now section 1546 Compiled General Laws, Everglades Drainage District tax certificates are held subject to right of redemption at any time prior to the days of sale of such lands. A comparison of section 16 of Chapter 6456, and amendments to said section under the Acts of 1915, 1917 and 1925, discloses that the only particulars in which changes were made, in so far as such changes affect the Board and the Trustees relatively, were for making this section conform with section 12 in respect to the Trustees of the Internal Improvement Fund, as substituted for Board of Commissioners of Everglades Drainage District. In the last part of this and of the amending sections, provision is made for the disposition of proceeds from the sale of tax lands.

[fol. 168] So long as the law required tax sale certificates to be held by the Board of Commissioners of Everglades Drainage District, the proceeds of the sale of said lands were required by law to be, "applied by the Board to the payment of bonds and other indebtedness incurred pursuant to the provisions of this Act, and to the construction, completion and maintenance of the works authorized by this

Act." When the Trustees were named as the agency for handling such certificates, the law provided that "the proceeds from the sale of such lands shall be applied by the said Trustees to the payment of drainage taxes and assessments and other obligations of the Trustees." Such change was necessary, for it is clear that the Trustees not being the governing board of the district, could not pay off District bonds, or pay for the District's drainage works.

The obligations of the Board of Commissioners of Everglades Drainage District were all those in connection with the said District relating to the construction of drainage works, the payment of bonds, and the general administration and operation of the said District, while under Section 12 of Chapter 6456, as amended by Section 3, Chapter 7305, the obligations of the Trustees as to Everglades Drainage District arising out of drainage tax certificates are only those relating to such certificates. These obligations in reference to certificates held by the said Trustees, as the law provides, are, when said certificated lands are sold by said Trustees, to pay the drainage taxes and assessments upon certificated lands and other obligations of the Trustees. The obligations referred to relate to the subject to which the sections refer. All of these sections of the law have reference to lands covered by drainage tax certificates and the handling of such certificates. Hence the obligations here referred to must be those in connection with said Everglades Drainage District tax certificates, but not the [fol. 169] general obligations of the Internal Improvement Fund, of which the Trustees are the statutory officers. The Trustees of the Internal Improvement Fund, as officers of such fund, have entirely, separate and distinct duties from the Trustees as they act in the capacity defined by law in handling Everglades Drainage District tax certificates.

Since under the original law the drainage board paid no money for the certificates when bid in in the name of the Board, the Trustees likewise would pay no money for the certificates required by a later law to be bid in in the name of the said Trustees. When the land covered by such certificates was disposed of by the Drainage Board through sales or redemption, the proceeds therefrom were applied by the said Board to the purposes of the District as provided by law, which purposes were the construction of drainage works, the payment of bonds, and other obligations of the

district. Likewise, when such certificates were disposed of by the Trustees, the proceeds therefrom were applied to the purposes of the District as provided by law, which said purposes were the payment of drainage taxes and assessments upon said lands, and other obligations relating thereto, such as fees, costs of advertising, interest, penalties, etc.

When the Trustees assumed those duties under amended section 12 which had previously been discharged by the Board of Commissioners of Everglades Drainage District, they assumed the duties of the custody and handling of the said certificates.

Under Section 12 of Chapter 6456, the Board of Commissioners of Everglades Drainage District were not required to pay the Tax Collector for the certificates bid in in the name of the Board. Such being true as to the Board of Commissioners of Everglades Drainage District, then such is true with reference to the Trustees of the Internal Improve-[fol. 170] ment Fund, except and unless elsewhere in laws relating to Everglades Drainage District the Trustees are directly and specifically charged with paying for certificates bid off in their name. The law, neither past nor present, contains any such charge, hence when by merely changing a name from that of the Drainage Board to that of the Trustees, and by such change the Trustees assumed the duties which had theretofore been performed by the Board of Commissioners of Everglades Drainage District, the said Trustees assumed precisely those duties, and no more, and no less. Since the duties of the Board of Commissioners of Everglades Drainage District did not, and could not, include the duty or obligation to pay for certificates bid in in the name of the said Board, neither can it be a duty of the Trustees so to do.

Section 23 of Chapter 6456, among other things, contains the following language: "Provided, however, that no obligation authorized by this Act shall be construed as an obligation of this State, *but only as the obligation of the drainage district herein created.*" This same provision is retained and carried forward in the Compiled General Laws of 1927 in the identical language of the original statute, except that in the compilation of 1927 the word "article" is substituted for the word "Act" in the original statute, and all bonds issued by the Everglades Drainage District were issued under Acts containing this provision.

The Legislature of 1923 passed Chapter 9132. Section 1 of said Act, now Section 1550 of the Compiled General Laws of 1927, without amendment reads as follows:

"That all Drainage Tax Certificates now held by the Board of Drainage Commissioners, pursuant to the provisions of Chapter 5377 of the Acts of 1905, as amended by Chapter 5709 of the Acts of 1907, and all Drainage Tax Certificates held by the Board of Commissioners of Everglades Drainage District, pursuant to the provisions of Chapter 6456 of the Acts of 1913, Laws of Florida, and Acts amendatory thereof, be and the same are hereby transferred, assigned and set over to the Trustees of the Internal Improvement Fund of Florida."

[fol. 171] Section 2 of said Act, now Section 1551 Compiled General Laws of 1927, without amendment, reads as follows:

"The Trustees of the Internal Improvement Fund are hereby authorized and required to receive and accept such Drainage Tax Certificates as are covered by the provisions of Section One of this Act, and to dispose of such Drainage Tax Certificates in the same manner that they are now authorized to dispose of said Drainage Tax Certificates and the lands covered thereby, vested in them under the provisions of Chapter 7305 of the Acts of 1917, Laws of Florida.

Section 2 of the above Chapter required the Trustees "to receive and accept such drainage tax certificates" and to dispose of the same in the manner authorized by law for the disposition of other drainage tax certificates. Nothing in Chapter 9132 requires the Board of Commissioners of Everglades Drainage District to receive any money from the Trustees on account of the transfer of such certificates, nor did it require the Trustees to pay the Board of Commissioners of Everglades Drainage District for the transfer of such certificates. If this Chapter had contemplated payment by the Trustees for the transfer of certificates there would have been provision in said Chapter for such payment, or at least some reference thereto. This Chapter required that the certificates transferred to the Trustees were to be held and disposed of in the same manner that other certificates were held and disposed of by said Trustees.

Since the Trustees were not required to pay for certificates transferred to them by the Everglades Drainage Board, it would be inconsistent that other tax certificates of which the Trustees became the custodian were required to be paid for by the Trustees, unless specific requirement therefor was contained in the law. In the laws relating to Everglades Drainage District and to the Trustees Internal Improvement Fund there is no such requirement. If the Trustees were required to pay for one class of certificates and not for the other, it would be necessary to make a distinction in the law between such classes. The law makes no such distinction.

[fol. 172]

4

There is a clear distinction between the status of the Trustees in reference to drainage tax certificates and the status of a common purchaser in reference to the same. The law requires the tax collector, when lands are not bought for taxes by some other party, to bid off said lands for the Trustees of the Internal Improvement Fund. The Trustees are required by law to receive and to be the custodian of the certificates bid off by the tax collector for them. Since the law requires the tax collector to bid off the certificates in the name of the Trustees, the Trustees have no option as to whether they will or will not take these certificates. The Trustees may not plead that they do not have funds with which to pay for said certificates, nor that they do not desire the said certificates, nor can they decline said certificates for any other reason. They cannot consult their judgment as to whether or not they become the holders of lands by virtue of said certificates. By law they are made the instrumentality through which said certificates must be handled. A further condition attaching to the certificates bid off for the Trustees is that the same shall be held subject to redemption, or that the Trustees may sell the same after giving notice required by law. It is clear that even though these certificates are held by the Trustees they are held subject to conditions imposed by law.

A comparison of the statutes of the Trustees, in reference to certificates, with that of the common purchaser discloses that the common purchaser at tax sale may exercise his own judgment as to whether or not he will buy a certain certificate; may decide whether or not he has money

with which to pay for the same; may select such certificates as he may desire, and may bid on them such amount as he chooses, provided such amount be within the limitations required by law. He takes the certificate subject to the [fol. 173] right of redemption but within a specified period. At the expiration of the time limit for redemption he may perfect his title and thereby extinguish all rights of the original owner in the lands covered by said certificate. None of these privileges or rights enjoyed by the common purchaser are enjoyed by the Trustees. Such being true there must be, and there is, a wide difference between the status of a common purchaser and the status of the Trustees as holders of said certificates. Consistent with this wide difference is the following: The common purchaser is required to pay for the certificates which he purchases. The Trustees are not required to pay for certificates bid off for them by the tax collector.

5

The theory of the complainants that the Trustees of the Internal Improvement Fund are required to pay for tax certificates when bid off to them by the tax collector and to pay subsequent taxes on lands covered thereby, and that the Trustees hold said certificates in their own right, as officers of the Internal Improvement Fund, is impracticable and inconsistent in the following particulars:

a. That if the Trustees of the Internal Improvement Fund paid for said certificates when bid off for them and paid the subsequent taxes on the lands covered thereby, such payment for said certificates and the taxes thereon would have immediately extinguished all lien of Everglades Drainage District taxes on said land, thereby no requirement would be necessary which provided that the Trustees must receive for the said lands when sold not less than the amount of the face of the certificate together with subsequent taxes thereon, including interest, penalties and costs. The only purpose of such provision was to assure the drainage district that the said district would receive, when the lands were sold, not less than the equity of the District in [fol. 174] said lands growing out of unpaid taxes. If the Trustees had held such lands in their own right, with the lien of Everglades Drainage District satisfied, the Trus-

tees would have had the right to sell the lands for such sums as they might determine.

b. That if the legislature had imposed the obligation upon the Trustees to pay for drainage tax certificates and subsequent taxes on lands covered thereby as a guarantee of tax payments upon privately owned lands in the district, and bonds were sold by the said district supported in part by such obligation, then that obligation would necessarily be a continuing one so long as bonds of the district were outstanding. Such obligation could not have been diminished as lands of the Trustees were sold or extinguished when the Trustees no longer owned lands in Everglades Drainage District, but as a matter of fact the Trustees have greatly diminished their holdings and the value of the same in Everglades Drainage District through sale of lands owned by them, and will eventually dispose of all their holdings in said District. As the holdings of the said Trustees are reduced so would the obligation, if it existed, of the said Trustees be diminished, for the obligation of the said Trustees, if it existed, could only be satisfied through the proceeds from the sale of Internal Improvement Fund lands therein. The Trustees have no other resources than those arising from lands, so that when the Trustees are divested of their holdings and resources in Everglades Drainage District, they would at the same time be divested of their ability to meet the obligation alleged to be imposed upon them, to the impairment of the alleged guarantee of tax payments by said Trustees and to the impairment of the District's bonds based on said tax payments.

c. That if the lands of the Internal Improvement Fund were liable for supplying money with which to pay delinquent taxes on privately owned lands, the said lands of the Internal Improvement Fund would be in the position [fol. 175] of double liability, with respect to Everglades Drainage District taxes, in that the said lands would be liable not only for the taxes directly imposed by the legislature thereon but also the said lands of the said fund would be liable for the unpaid taxes on other lands owned by private individuals. Such position is not consistent with the rights of the Trustees to sell Internal Improvement Fund lands, for, if the Internal Improvement Fund lands are obligated to pay delinquent taxes on other lands, then

the position of the Internal Improvement Fund is that of guaranteeing tax payments and indirectly guaranteeing bond payments, because the payment of bonds rests upon taxes and when the Trustees sell Internal Improvement Fund lands they would thereby reduce the guarantee behind the taxes and the security behind the District's bonds. The guarantee of tax payments with the State's property amounts to a guarantee of the bonds and violates the specific provision in the Everglades Drainage District Act "that no obligation authorized by this article shall be construed as an obligation of this State, but only as the obligation of the drainage district herein created", and violates Section 6 of Article 9 of the State Constitution reading as follows: "The legislature shall have the power to provide for issuing State bonds only for the purpose of repelling invasion, or suppressing insurrection, or for the purpose of redeeming or refunding bonds already issued at a lower rate of interest", and also violates Section 10 of said Article 9 of the State Constitution, which provides that "the credit of the State shall not be pledged or loaned to any individual, company, corporation, or association".

d. That the burden which would have been imposed upon the Trustees of the Internal Improvement Fund, as officers of that fund, by an obligation to pay for drainage tax certificates bid off to them by the tax collector, and subsequent [fol. 176] taxes thereon, would have been so great that it would have been impossible for the Trustees to carry out such obligation, if it existed. The amount of money involved to the present date in Everglades Drainage District tax certificates bid off by the tax collectors for the Trustees of the Internal Improvement Fund reaches a sum in excess of four million dollars. The Trustees are not only without money but are without resources to raise such sum, irrespective of the admitted obligation upon the Internal Improvement Fund lands in the district to pay the taxes levied upon them by the legislature. The imposing of such an obligation, even though by statute, would have been the imposing upon the Trustees of that which is impossible and no such statute would be valid.

e. That if it was competent for the legislature to impose such burdens upon the Trustees of the Internal Improvement Fund, with reference to Everglades Drainage District and the State owned lands within the same, it would also

be competent for the state legislature to create a special improvement district embracing the entire State of Florida and all of the lands owned by the Trustees of the Internal Improvement Fund in the State, and impose the same obligations upon the Trustees of the Internal Improvement Fund with reference to such special improvement district, which under the theory of complainants would be a guarantee of taxes throughout the district by the pledging of the lands of the State to the payment of such taxes in case of private owners failing to pay, and in effect would underwrite or guarantee bonds which might be issued by such improvement district, which contingent obligation to pay taxes on lands other than State owned lands would be a violation of Section 6 and Section 10 of Article 9 of the State Constitution; that if the State would be liable primarily or secondarily, presently or in the future, actually or [fol. 177] contingently, for the payment of any sum of money to the principal or interest upon bonds to be issued, there would be a violation of the constitutional provisions above mentioned.

6

If the Trustees of the Internal Improvement Fund hold Everglades Drainage District tax certificates and the lands covered thereby in their own right, and if taxes on Internal Improvement Fund lands are not paid by said Trustees and such lands go to sale, as would be the case, the same would be offered by the tax collector at such tax sale, and, in the absence of other bidders, would be bid off by said tax collector for the Trustees of the Internal Improvement Fund, thereby again becoming the property of said Trustees in their own right. Again when taxes were not paid upon said lands by said Trustees, there would follow another tax sale, another bidding off of the lands for the said Trustees, another vesting of said lands in said Trustees in their own right, and such circulation in and out of the Trustees would result in an absurdity in so far as concerns any tax lien of Everglades Drainage District.

7

That it has been the policy of the State to make internal improvements without incurring debts and to live within the income of the State, which policy is particularly apparent in the vast highway construction program carried on

by the State in recent years; that debts or obligations are synonymous with bonds as construed by the State Supreme Court in their advisory opinion to the Governor, as reported in 114 Southern 850, in which the Supreme Court used this language: "in our view any attempt to authorize an agency of the State to borrow money or issue any promise to pay, which would be an obligation of the State for anticipated public work, is in violation of the provisions of the Constitu- [fol. 178] tion upon that subject", and in which opinion in paragraph 5 of the syllabus, the Court further said: "State bonds can be issued only for the purpose of repelling invasion, or suppressing insurrection. *The spirit as well as the letter of the inhibition should be preserved and given full force and effect.*"

8

That the purpose of the original Everglades Drainage Act, Chapter 6436 of 1913, was to create a special district and to provide impartially for benefit assessments on all the lands within the district only, which district would be in a position to issue bonds without any obligation resting upon the State and without violation of the constitutional provisions of the State prohibiting State bonds and the pledging of the credit of the State.

9

That the history of the Everglades Drainage District and the legislation pertaining thereto, to and including the sale of Everglades Drainage District bonds, shows that it was not the purpose of the Trustees of the Internal Improvement Fund or of the legislature that the Trustees should be obligated to pay for Everglades Drainage District tax certificates bid off to them or the subsequent taxes on lands covered thereby, and this is shown by the following:

(a) In a report from the old Drainage Board, created under the Acts of 1905 and 1907, and the Trustees of the Internal Improvement Fund to the Legislature of 1913, the following language is contained, as shown on page 911 of the Senate Journal of 1913:

"We are of the opinion that in order to get the best results that it is necessary to push the drainage operations much

more rapidly than in the past. It is also our opinion that there are only two ways in which the operations can be carried on as rapidly as should be—one is by levying a very high drainage tax within the drainage district, and another [fol. 179] is by providing by law for the issuance of drainage district bonds, which said bonds should be secured by the drainage tax to be levied upon the lands only in the drainage district, the interest on said bonds, and the sinking fund for their retirement to be provided from the said drainage tax. This plan would not create a State debt and would require a tax only in the drainage district upon lands benefitted. As the lands held by the Trustees constitute only about one-fourth of the land in the drainage district the taxes on State lands held by the Trustees would be for only one-fourth of the obligation incurred on account of the proposed bond issue."

(b) That the Legislature of 1913 amended the Everglades Drainage District Bill which, when finally adopted became Chapter 6456, Acts of 1913, which amendment was never altered to and including the date of the sale of all Everglades Drainage District bonds as shown on page 2233 of the Legislative Senate Journal of 1913, as follows:

"Mr. Calkins, by unanimous consent, offered the following amendment:

Add to Section 23 at the end thereof, the following: "Provided, however, that no obligation authorized by this Act shall be construed as an obligation of this State, but only as the obligation of the drainage district herein created.

Mr. Calkins moved to adopt the amendment. Which was agreed to."

10

That the continued and persistent efforts of Spitzer, Rorick and Company, purchasers of Everglades Drainage District bonds, to induce the Trustees of the Internal Improvement Fund to commit themselves to a policy of payment for Everglades Drainage District tax certificates bid off to the Trustees, and to pay subsequent taxes on lands covered thereby, was a recognition upon the part of the bond purchasers that there was no statutory requirement for the Trustees to make such payments, and was but an attempt on their part to induce the Trustees to bind themselves other-

wise, which the Trustees did not and could not do in the absence of statutory authority therefor.

[fol. 180]

11

That the issue of bonds without any recital therein that the Trustees of the Internal Improvement Fund were required to pay for Everglades Drainage District tax certificates when bid off to the Trustees, and to pay subsequent taxes on lands covered thereby, is a recognition upon the part of the Board of Commissioners of Everglades Drainage District and the bond purchasers that the Trustees are not required to make such payments.

12

That any obligation resting upon the State of Florida and the Trustees of the Internal Improvement Fund, as State agents, under the provisions of the Act of Congress approved September 28th, 1850, granting swamp and overflowed lands to the State, and under the provisions of Chapter 610, Laws of Florida, Acts of 1855, requiring drainage and reclamation of swamp and overflowed lands, is a statewide obligation without preference to any particular section or district, and that such lands owned by the State of Florida and held by the Trustees of the Internal Improvement Fund, scattered throughout the State and being in nearly every county in the State, are equally impressed with such obligation without preference to one tract, one county, or one district over another tract, county or district; that such obligation, if any, is a prior and primary obligation upon the State of Florida and upon the Trustees of the Internal Improvement Fund as State agents.

13

That the Constitution of Florida, in Section 4 of Article 12, provides, among other things, that 25% of the proceeds of the sales of public lands, which are now or may hereafter be owned by the State, shall be paid into the State School Fund; that this provision of the Constitution of Florida has been in full force and effect since the ratification of the Constitution of 1868; that from the date of the [fol. 181] ratification of the State Constitution of 1868 the Trustees of the Internal Improvement Fund have recognized such obligation and have complied with the same to

the extent of paying large sums of money into the State School Fund, representing 25% of the sales of swamp and overflowed lands and other public lands; that said obligation under said constitutional provision is a secondary obligation resting upon the Trustees of the Internal Improvement Fund as State agents and has been a continuing obligation since the adoption of the Constitution of 1868.

14

That any alleged obligation upon the Trustees of the Internal Improvement Fund, by virtue of Everglades Drainage District statutes or other statutes subsequent to the adoption of the Constitution of 1868, or any obligation upon the Trustees of the Internal Improvement Fund by virtue of any alleged agreements upon their part purporting to commit themselves to any policy of payment for Everglades Drainage District tax certificates bid off to them by the tax collectors within the district, or to pay subsequent taxes on lands covered thereby, which alleged obligations, both under the statutes as well as under alleged agreements, these defendants aver are subsequent and subordinate to the primary and secondary obligations already mentioned, to-wit: the obligation to drain and reclaim all the swamp and overflowed lands throughout the State, without preference to one tract or district over another tract or district; and to pay in to the State School Fund 25% of the sales of such land.

15

That the Trustees of the Internal Improvement Fund are not able to estimate the approximate cost to drain and reclaim all State owned swamp and overflowed lands throughout the State, but these defendants believe that in order to accomplish the drainage and reclamation of all the State owned swamp and overflowed lands of the State, and [fol. 182] at the same time pay into the State School Fund, as required by the State Constitution, 25% from the sales of such lands, all of such lands will be required for such purposes, and that such lands or the proceeds of the sale of such land, after taking care of said primary and secondary obligations above mentioned, would be insufficient to guarantee or to pay for Everglades Drainage District tax cer-

ificates on privately owned lands bid off to them by the tax collectors and to pay subsequent taxes thereon, even though there existed under the statutes, or by virtue of alleged agreements, such obligation upon the Trustees of the Internal Improvement Fund, which alleged obligations, however, these defendants deny.

16

That within the Everglades Drainage District are many sub-drainage districts, and that without Everglades Drainage District and in other sections of the State there exist special drainage districts in which said districts are located swamp and overflowed lands of the State, held by the Trustees of the Internal Improvement Fund as State agents, in which said districts bonds have been issued and sold, and in which the laws governing the same are similar to the Everglades Drainage District statutes and particularly in the requirement that the swamp and overflowed lands belonging to the State are subject to the benefit assessment the same as other lands within such district; that the obligation of the Trustees Internal Improvement Fund, as State agents, to pay for such benefit tax assessments in said districts, is as binding as the obligation to pay taxes on State owned swamp and overflowed lands under the Everglades Drainage District statutes; that large sums of money are now due by the Trustees of the Internal Improvement Fund to such sub-drainage and special drainage districts for taxes assessed against State owned lands therein, which the Trustees of the Internal Improvement Fund are without funds to pay, and the State owned lands therein [fol. 183] are in danger of being sold for delinquent taxes and the title thereto passing out of the Trustees of the Internal Improvement Fund as State agents, and that any alleged requirement under the statute, or by alleged agreements, for the Trustees of the Internal Improvement Fund to pay for Everglades Drainage District tax certificates on privately owned lands when bid off to them by the tax collectors, and to pay subsequent taxes thereon, would further increase the said liability that the State owned swamp and overflowed lands within said sub-drainage and special drainage districts may be sold to private parties for delinquent taxes, and that the title of the State of Florida in and to such lands may be taken away from the State.

That the funds of the Trustees Internal Improvement Fund are derived exclusively from lands owned by the State; that sales and leases of State lands have practically ceased and that very few sales or leases of State lands are now being made or have been made for many months, for the reason that there is no demand for the same; that the Trustees of the Internal Improvement Fund have for many months been unable to make any substantial collections on payments due for land previously sold; that the Trustees of the Internal Improvement Fund are without funds to pay Everglades Drainage District taxes and other special drainage district taxes now due and assessed against State owned lands, both within and without the Everglades Drainage District; that all of the money in the hands of the Trustees of the Internal Improvement Fund on October 1, 1932 was only \$14,316.09, all of which is and will be needed for current administration purposes during the current calendar year.

All of which matters and things these defendants are ready and willing to prove as this Honorable Court shall direct, and pray to be hence dismissed with their reasonable [fol. 184] costs and charges in this behalf most wrongfully sustained,

Doyle E. Carlton, Governor; Ernest Amos, Comptroller; W. V. Knott, Treasurer; Cary D. Landis, Attorney General; Nathan Mayo, Commissioner of Agriculture, as and Constituting the Trustees of the Internal Improvement Fund of the State of Florida, Defendants. Cary D. Landis, Attorney General; H. E. Carter, Assistant Attorney General; Marvin C. McIntosh, Assistant Attorney General, Solicitors for Defendants, Trustees I. I. Fund.

[fol. 185] IN UNITED STATES DISTRICT COURT

ANSWER OF GOVERNOR OF FLORIDA, ET AL.—Filed November 14, 1932

Come now Doyle E. Carlton, as Governor of the State of Florida, Ernest Amos, as Comptroller of the State of Florida, Cary D. Landis, as Attorney General of the State

of Florida, W. V. Knott, as Treasurer of the State of Florida, Nathan Mayo, as Commissioner of Agriculture of the State of Florida, and D. Graham Copeland, made defendants herein as members of Board of Commissioners of Everglades Drainage District, and for answer to the bill, supplemental bill, and amendments say that they are no longer members of the Board of Commissioners of Everglades Drainage District, and are, therefore, not now proper parties to this cause, and defendants pray the judgment of the Court that the cause be dismissed as to them, and that they be allowed their costs herein incurred.

(S.) Carter & Yonge, Pensacola, Florida; (S.) George C. Bedell, Jacksonville, Florida; (S.) Thos. McE. Johnston, Miami, Florida, Solicitors for Said Defendants. Carter & Yonge, Pensacola, Florida; Bedell & Bedell, Jacksonville, Florida; Evans & Mershon, Miami, Florida, of Counsel.

[fol. 186] IN UNITED STATES DISTRICT COURT

ANSWER OF BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT ET AL.—Filed November 14, 1932

Come now Board of Commissioners of Everglades Drainage District, and Marcus A. Milam, W. H. Lair, Ralph A. Horton and C. E. Simmons, as members of the Board of Commissioners of Everglades Drainage District, and for answer to the bill, supplemental bill, and amendments, answering say:

1

Defendants admit the citizenship and residences of the parties and the sum involved, as alleged in paragraph 1 of the bill.

2

The allegations of paragraph 2 of the bill are admitted.

3

Answering paragraph 3 of the bill of complaint, these defendants admit that Everglades Drainage District comprises more than four million acres of public and private lands in the southern part of Florida; these defendants

deny that all of the lands included within said Everglades Drainage District were granted by the Congress of the United States to the State of Florida by the Act of September 28, 1850, as swamp and overflowed lands, but aver that a large portion of the area included within said Everglades Drainage District was not granted to the State of Florida under the provisions of the said act of September 28, 1850. These defendants admit that the grant to the State of Florida under the Act of Congress of September [fol. 187] 28, 1850 was made to enable the said State to construct the necessary levees and drains to reclaim the swamp and overflowed lands granted, and deny that under the provisions of said grant the lands and their proceeds were to be applied exclusively, as far as necessary, to the purpose of reclaiming said lands, but defendants aver that the said Act of Congress provided that the proceeds of the lands thereby granted, whether from sale or by direct appropriation in kind, should be applied exclusively, as far as necessary, to reclaiming said lands by means of levees and drains.

Further answering said paragraph 3, defendants deny that the enactment by the Legislature of Florida of Chapter 610 of the Laws of Florida, approved January 6, 1885, was a recognition of any obligation resting upon the State of Florida to drain the lands, title to which vested in the State of Florida under the provisions of said Act of Congress approved September 28, 1850, but these defendants admit that the said Chapter 610 of the Laws of Florida, approved January 6, 1855, was duly enacted and on said date became a law of said State.

Defendants admit that the legislature of the State of Florida by Chapter 5377 of the Acts of 1905, made provisions for drainage operations to be carried on by the Board of Drainage Commissioners, and admit that the said Act of 1905 was amended by Chapter 5709 of the Acts of 1907, by which a drainage district was created in the Everglades territory; that Everglades Drainage District was established and created by Chapter 6456, Laws of Florida, Acts of 1913, and that drainage operations within said Everglades Drainage District were to be prosecuted by Board of Commissioners of Everglades Drainage District which was composed of the same state officers who are the Trustees of the Internal Improvement Fund.

[fol. 188] Defendants admit that the state officers and their successors in office who are by Chapter 610 of the Laws of 1855, made Trustees of the Internal Improvement Fund with the statutory powers and duties with reference to draining the swamp and overflowed lands, are, by Chapter 6456, of the Acts of 1913, made the Board of Commissioners of Everglades Drainage District with authority to establish and construct a system of canals, levees, dikes, drains and reservoirs to reclaim the land within the Everglades Drainage District, but these defendants deny that the said Chapter 6456, Acts of 1913, was enacted in furtherance of any duty resting upon the State of Florida or upon said Trustees of the Internal Improvement Fund to drain or reclaim the lands included within Everglades Drainage District, or any lands the title to which vested in the State of Florida under the provisions of the Act of Congress approved September 28, 1850.

Defendants admit that the need of flood control and its benefits to public safety and health and to the lands in Everglades Drainage District are obvious upon a consideration of the history and conditions of the Everglades section, and the adjacent territory, and admit that the same has been recognized by the federal grant of swamp and overflowed lands to the State in providing that such lands, or their proceeds, should be used for the purpose of constructing levees and drains; but these defendants deny that the said Act of September 28, 1850, required that all of the lands which were the subject of such grant or that all of the proceeds of such lands should be applied to the purpose of draining and reclaiming the same, but these defendants say that the said Act of September 28, 1850, provided merely that the proceeds of said lands whether from sale or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands.

Defendants admit that Everglades Drainage District is a statutory subdivision of the State for special governmental purposes; that Trustees of the Internal Improvement Fund now own approximately 800,000 acres of land in said Everglades Drainage District which they owned prior to the establishment of said District; that a substantial part of [fol. 189] the lands in said District has been bid off by the tax collectors of the several counties in the District to the Trustees of the Internal Improvement Fund for default in

the payment of drainage taxes levied by the statute under which the Everglades Drainage District was established and the bonds of the District were issued.

These defendants aver that all impositions, taxes and assessments which were levied by said Chapter 6456, Laws of Florida, Acts of 1913, and which have been levied for the benefit of said Everglades Drainage District by subsequent statutes of the State of Florida, are special assessments as distinguished from general taxes, and that such levees and impositions rest and depend for their validity upon the theory that the lands made subject to the same will be or have been specially benefited by the construction of works of drainage and reclamation by said Everglades Drainage District, at least to the extent of the levies and impositions upon each parcel of land made subject thereto.

4

Answering paragraph 4, defendants admit that large expenditures have been made within Everglades Drainage District for construction of works of drainage and reclamation, and that, in order to proceed with the construction, money had to be borrowed, which it was contemplated would be repaid out of the taxes collected upon the lands within Everglades Drainage District. Defendants admit the enactment and the provisions of Chapter 6456, Laws of Florida, Acts of 1913, as amended by Chapter 6957, Laws of Florida, Acts of 1915, and Chapter 7305, Laws of Florida, Acts of 1917, as alleged in paragraph 4 of the bill.

5

The enactment and provisions of Chapter 7862, Laws of Florida, Acts of 1919, are admitted.

6

The enactment and provisions of Chapter 8413, Laws of [fol. 190] Florida, Acts of 1921, are admitted.

7

The enactment and provisions of Chapter 9119, Laws of Florida, Acts of 1923, are admitted.

7-a

Defendants admit that in 1925 the Legislature of Florida, by Chapter 10026, Laws of Florida, amended Section 1160

of the Revised General Statutes and Section 1164 of said Revised General Statutes, as amended by Chapter 8413, Laws of Florida, as amended by Chapter 9119, Laws of Florida, and also amended Section 1178 of said Revised General Statutes, as amended by Chapter 8413, as amended by Chapter 9119, Laws of Florida, and also that the said Legislature, by Chapter 10027, amended Section 1179 of said Revised General Statutes, the same being Section 20 of Chapter 6456, Laws of Florida, Acts of 1913, as amended by Section 6 of Chapter 7305, Laws of Florida, Acts of 1917. Defendants also admit that by said Chapter 10026, Acts of 1925, the authority was conferred on Board of Commissioners of Everglades Drainage District to borrow money on permanent loans at such rates of interest, not exceeding six per cent per annum, as it should deem proper, and to issue negotiable coupon bonds of said District, and that it was provided that the amount of bonds issued and outstanding should not at any time exceed \$14,250,000.00; and defendants admit that the said Chapter 10026, Acts of 1925, contained other provisions as set forth in said paragraph of said bill.

Defendants deny that Chapter 10027, Acts of 1925, has any relation whatsoever to the issuance of additional bonds of Everglades Drainage District in accordance with the provisions of the said Chapter 10026, but, on the contrary, these defendants aver that the said Chapter 10026, Acts of 1925, became a law by the approval of the Governor on June 11, 1925, and that the said Chapter 10027, acts of 1925, became a law by the approval of the Governor on June 4, 1925; that the said Chapter 10027 is an amendment [fol. 191] of Section 1179 of the Revised General Statutes of the State of Florida, relating to the denominations and redemptions of bonds of Everglades Drainage District, and did not authorize the issuance of any additional bonds of Everglades Drainage District, but only authorized the refunding of the bonds of Everglades Drainage District which had theretofore been issued; that said Chapter 10026 authorizes the issuance of \$3,000,000.00 of additional bonds of said District and increases the rates of levy of acreage taxes, in order that the total of such levies might be sufficient to meet the principal and interest of such additional bonds authorized to be issued, and all other bonds of said District which were then outstanding.

7-b

Answering paragraph 7-b of the bill, defendants deny that pursuant to the provisions of Chapter 10026, Acts of 1925, Board of Commissioners of Everglades Drainage District issued and sold to Spitzer, Rorick & Company, or to anyone else, any bonds of said Everglades Drainage District; defendants admit that in pursuance of the provisions of said Chapter 10027, Board of Commissioners of Everglades Drainage District did issue and sell to the said Spitzer, Rorick & Company refunding bonds, as alleged in said paragraph of said bill; and defendants further admit that in pursuance of statutes of the State of Florida enacted prior to the year 1925, the said Board of Commissioners of Everglades Drainage District did issue and sell to the said Spitzer, Rorick & Company bonds of said Everglades Drainage District, as alleged in said paragraph of said bill. Defendants say that the only bonds of Everglades Drainage District ever issued and sold were bonds issued in pursuance of the provisions of Section 19 of Chapter 6456, Laws of Florida, Acts of 1913, as amended by Chapter 6957, Laws of Florida, Acts of 1915, and Chapter 7862, Laws of Florida, Acts of 1919, and Chapter 9119, Laws of Florida, Acts of 1923, and refunding bonds, being renewals [fol. 192] of existing bonds, issued under Chapter 10027, Laws of Florida, Acts of 1925; and that no bonds were ever issued under Chapter 10026, Laws of Florida, Acts of 1925.

Defendants admit that there are now outstanding \$9,919,000.00 principal amount of bonds of said Everglades Drainage District, as alleged in said paragraph of said bill, and admit that \$100,000.00 of the principal of said bonds became due on January 1, 1931, and that the said sum of money was not paid, and that the interest on all of the bonds of said District then outstanding became due on January 1, 1931, and was not paid. Defendants are without knowledge as to whether the plaintiffs are the holders of bonds and interest coupons as set forth in said paragraph of said bill.

7-c

Answering the amendment to the bill of complaint numbered paragraph 7-c, defendants deny that this suit involves any question arising under the Constitution of laws of the United States, and deny that Chapter 13633, Laws of

Florida, Acts of 1929, is contrary to either Section 10 of Article I of the Constitution of the United States, or to the Fourteenth Amendment to the Constitution of the United States, or to Section 1 thereof.

8.

Answering paragraph 8, defendants admit the terms of the bonds and recitations therein, as alleged in said paragraph.

9.

Defendants admit that there are now outstanding in the hands of bona fide owners for value \$9,919,000.00 principal amount of the bonds of Board of Commissioners of Everglades Drainage District issued and sold to Spitzer, Rorick & Company, as alleged in the bill; and that the said sum of money constitutes the principal amount of all outstanding bonds of said District.

[fol. 193] Defendants admit that extensive improvements in Everglades Drainage District have been made out of the proceeds of the sale of said bonds, which improvements include the construction of canals, but defendants deny that the canals which have been constructed within said District are all of the canals which are necessary for the drainage of the land situated within said District and for the protection of said lands from flood.

Defendants admit that there is land within Everglades Drainage District which is now available for cultivation, which was in 1913, and prior to the expenditure of the proceeds of the sale of bonds of said District, covered with water, but defendants deny that the quantity of said land is great.

Defendants admit that since the issuance of the bonds described in the bill, improvements have been made in Everglades Drainage District, including the construction of extensive roads, but defendants deny that the said roads were constructed by the use of funds derived from the sale of said bonds, or in any other manner by the said Everglades Drainage District.

Defendants deny that the assessed valuation of all lands located within Everglades Drainage District, in 1915, was approximately \$32,000,000.00, and defendants deny that the assessed valuation of said lands in 1928, was approximately \$122,000,000.00.

Defendants are without knowledge as to whether counsel for Trustees of the Internal Improvement Fund and for Board of Commissioners of Everglades Drainage District, on January 25, 1924, or at any other time, wrote a letter to Spitzer, Rorick & Company, as alleged in said paragraph of said bill, but defendants deny that the quantity of land within said Everglades Drainage District which, on January 25, 1924, could not have been bought on the market for \$300.00 per acre was great; and these defendants aver that the average market value of land within Everglades Drainage District at the present time is much less than \$300.00 per acre.

10

Defendants admit that the reclamation of lands in Everglades Drainage District in 1913 and for some time thereafter, involved difficulties of an engineering, financial and practical nature, as alleged in paragraph 10 of said bill; and these defendants aver that the continued reclamation of said lands does now, and has always, involved such difficulties. Defendants are without knowledge as to whether the considerations alleged in said paragraph of said bill influence Spitzer, Rorick & Company to purchase bonds of Everglades Drainage District, but defendants deny that the said Spitzer, Rorick & Company were influenced to purchase any bonds of said Everglades Drainage District upon the theory that Trustees of the Internal Improvement Fund were obligated by statute or otherwise to bid in and pay for the lands offered at public sale by the tax collectors for non-payment of drainage taxes in each and every case where no other bidder appeared at the sale who had actually bid in the lands for the amount of defaulted tax, interest and penalties; and defendants aver that the said Trustees of the Internal Improvement Fund were never bound, by statute or otherwise, so to do.

Defendants are without knowledge as to whether the Attorney General of the State of Florida gave written opinions, as alleged in said paragraph of said bill.

11

Defendants admit that in each and every statute of the State of Florida which authorized bonds to be issued and sold by Board of Commissioners of Everglades Drainage District, drainage or acreage taxes were levied by the stat-

utes sufficient to meet requirements of the bonds so authorized to be issued and sold, principal and interest; and that it was provided by each of such statutes, among other [fol. 195] things, that nothing contained therein should be deemed a limitation of the right of the Legislature to authorize additional bonds of said District, payable from drainage taxes, provided that any such additional authority should be accompanied by the levy and imposition of additional taxes and assessments sufficient to meet the payment of the bonds authorized and interest thereon, as the same should become due; and that such payments were required to be provided for by a sinking fund in accordance with the terms of each of such statutes; and that it was further provided that such additional bonds should constitute an obligation of equal dignity with the bonds authorized to be issued and equally with the bonds so authorized to be issued, should be entitled to payment from all drainage taxes then or thereafter imposed upon the lands within the District, without preference to any bonds or series of bonds over any other bonds or series of bonds. Defendants deny that in and by Section 5 of Chapter 6456, of the Acts of 1913, as amended by the Acts of 1915, 1919, 1921, 1923 and 1925, annual assessments of taxes were levied and imposed upon all lands within Everglades Drainage District, but defendants admit that under the provisions of said Chapter 6456, as amended, as aforesaid, annual assessments of taxes were levied and imposed upon all lands within said Everglades Drainage District, except certain lands therein specifically exempted from the levy of such assessments, at the rates provided by said statute; and defendants admit that for the purpose of levying such assessments, Everglades Drainage District was divided into different zones.

Defendants admit that drainage taxes were levied upon lands within Everglades Drainage District in the several zones, and at the rate in each zone set forth in paragraph 11 of said bill of complaint, but defendants deny that the said rates were fixed and imposed in said zones by Chapter 6456, Laws of Florida, Acts of 1913, as amended in 1925, as is alleged in the bill, but that the rates set forth in the bill are those levied by Chapter 12017, Laws of Florida, [fol. 196] Acts of 1927, and that said rates of levy were not fixed and imposed by any other statute of the State of Florida except Chapter 12017, Laws of Florida, Acts of 1927.

Further answering said paragraph, defendants say that said Section 5 of Chapter 6456, Laws of Florida, Acts of 1913, as amended by Section 1 of Chapter 12017, Laws of Florida, Acts of 1927, was repealed by Chapter 13633, Laws of Florida, Acts of 1929; and that said Chapter 13633, Laws of Florida, Acts of 1929, was repealed by Chapter 14717, Laws of Florida, Acts of 1931.

12

Answering paragraph 12 of the bill, defendants say it is not true that the Legislature appropriated the proceeds of the drainage taxes levied to the payment of the principal and interest of the bonds, and aver that by the express provisions of Section 24, of Chapter 6456, Laws of Florida, Acts of 1913, it is only moneys of the District in the hand of the Treasurer of the State of Florida, other than proceeds of drainage taxes levied and imposed, which are appropriated for such purposes. Defendants admit that said Section 24, Chapter 6456, Acts of 1913, created a sinking fund and required that there be paid into it annually out of the taxes levied and imposed, and out of the other moneys of the District at least 2% of the amount of the bonds outstanding. Defendants admit passage by the Board of the resolution set out in paragraph 12 of the bill, and that the bonds issued recited that the full credit and resources of the District were pledged for their punctual payment; but defendants aver that the scope of said resolution could be no broader nor the legal effect of the resolution and the said provision in the bonds no different, than the statute under which the resolution was passed and the bonds were issued. [fol. 197] Defendants admit that Section 23 of said act provided that the terms of the act should constitute an ir-repealable contract between the Board and Everglades Drainage District and the holders of any bonds and coupons thereof issued pursuant to the provisions of the act.

13

Answering paragraph 13 of the bill, defendants deny that one of the vital provisions of the statutes under which the bonds of Everglades Drainage District were issued, securing the bonds and insuring their collectibility, was that the Trustees of the Internal Improvement Fund will bid in all of the lands of the District which are offered by the tax

collectors at public sale for non-payment of drainage taxes, and which are not purchased by any other purchaser for the amount of unpaid taxes, interest and penalties; and defendants aver that there is not now, and never has been, any duty imposed upon Trustees of the Internal Improvement Fund, by statute or otherwise, to bid in any lands offered at tax sales for the non-payment of Everglades Drainage District taxes.

Defendants deny that all lands included within Everglades Drainage District had been the property of the State of Florida, but admit that the greater portion of such lands had been the property of the State of Florida; and that such lands were acquired by said State under the provisions of the Act of Congress approved September 28, 1850; but defendants deny that there rested upon the said State any obligation under the said Act of September 28, 1850, or otherwise, to drain and reclaim the said land or any part thereof.

Defendants deny that in 1917, as a condition to the purchase of additional bonds of said Everglades Drainage District, Spitzer, Rorick & Company required that the statute under which additional bonds should be issued, must provide [fol. 198] vide that when lands in the District are offered at public sale by the tax collectors for non-payment of drainage taxes, if no purchaser appears at the sale who purchases the lands so offered for the amount of the taxes, interest and penalties, and pays therefor in cash, the tax collectors shall bid in said lands in the name of the Trustees of the Internal Improvement Fund; but these defendants admit that Board of Commissioners of Everglades Drainage District did, by resolution adopted in January, 1917, recommend to the session of the Legislature to convene in said year, that the existing laws be amended so that when there was no bidder for lands at tax sales for the non-payment of Everglades Drainage District taxes, the said lands should be bid in by the tax collector in the name of Trustees of the Internal Improvement Fund, instead of in the name of Board of Commissioners of Everglades Drainage District, as was provided by laws then in existence.

Defendants admit the allegations of said paragraph 13, as to the enactment and provisions of the statutes therein referred to, that is to say, Sections 8, 9, 12, 14, 16 and 17

of Chapter 6456, Laws of Florida, Acts of 1913, as amended in 1917, and 1919, and Section 5 of Chapter 6456, Acts of 1913, and Section 6 of Chapter 4322, Acts of 1895, and Section 1 of Chapter 6158, Acts of 1911.

These defendants deny that Section 12 of said Chapter 6456, as amended by the Act of 1917, provided that the proceeds of lands bid in by the tax collector in the name of Trustees of the Internal Improvement Fund at tax sales for the non-payment of Everglades Drainage District taxes, should become the property of such Trustees, but, on the contrary, these defendants say that the true meaning and intent of the said Chapter 7305, Acts of 1917, is to require the said Trustees of the Internal Improvement Fund to hold all moneys received by them as the proceeds of the sale of lands bid in in the name of such Trustees of the Internal [fol. 199] Improvement Fund by tax collectors, as aforesaid, for the purpose of paying drainage taxes and assessments upon such lands to Everglades Drainage District, and for the discharge of other obligations of such Trustees of the Internal Improvement Fund, acting in their capacity as agents for Board of Commissioners of Everglades Drainage District.

Defendants deny that the proceeds of the redemption of tax sale certificates issued in the name of Trustees of the Internal Improvement Fund, under the provisions of said Act of 1917, became the property of said Trustees of the Internal Improvement Fund; but these defendants aver that all moneys so received by said Trustees of the Internal Improvement Fund were held by the said Trustees as agents or trustees for Board of Commissioners of Everglades Drainage District.

Defendants are without knowledge as to any action taken by Trustees of the Internal Improvement Fund as to the conduct of such Trustees, and as to letters and minutes alleged to have been written by the said Trustees of the Internal Improvement Fund.

Defendants deny that Trustees of the Internal Improvement Fund paid for tax sale certificates bid off in their name up to and including the sale for the non-payment of Everglades Drainage District taxes assessed for the year 1927, and say that the Trustees of the Internal Improvement Fund paid for tax sale certificates bid off in their name up to and including the sale for the non-payment of Everglades Drainage District taxes assessed for the year

1927, except the tax sale certificates bid off in their name for the non-payment of Everglades Drainage District taxes assessed for the year 1926, and admit that said Trustees have not paid for tax sale certificates issued in their name in pursuance of the tax sale for the non-payment of Everglades Drainage District taxes assessed for the year 1928, [fol. 200] and say that the Trustees did not pay for the tax sale certificates issued in pursuance of the tax sale for the non-payment of Everglades Drainage District taxes assessed for the year 1926. These defendants deny that the said Trustees of the Internal Improvement Fund in making payment for tax sale certificates issued in their name, up to and including the sale for 1927 Everglades Drainage District taxes, were acting in pursuance of any statute of the State of Florida requiring the said Trustees to make such payments.

Defendants deny that in 1929, or at any other time, the Board of Commissioners of Everglades Drainage District, recommended to the Legislature of the State of Florida that a statute be enacted which would either reduce or extinguish the drainage taxes which constitute a part of the obligation of the bonds of Everglades Drainage District.

Defendants admit the enactment of Chapter 13633, Laws of Florida, Acts of 1929, by the Legislature of the State of Florida, and the provisions therein contained. Defendants deny that by the passage of said Act of 1929, the Legislature attempted to substitute for the taxes levied by the Acts under which bonds were issued, taxes at lower rates.

14

Answering paragraph 14 of the bill, defendants deny that in 1929, or at any other time, Board of Commissioners of Everglades Drainage District, for the purpose of preventing the application to the bonds issued by the said Board of the taxes levied by statute and pledged and appropriated for the payment of such bonds, or for any other purpose, recommended to the Legislature that a statute be enacted which would create a District substantially identical with Everglades Drainage District, and which would, in effect, appropriate the taxes which were levied under the statutes under which the said bonds were issued.

[fol. 201] Defendants admit the passage and approval of

in said paragraph of said bill; defendants admit that all of the territory included within Everglades Drainage District was included within Okeechobee Flood Control District, as the same was created by said Chapter 13711, Acts of 1929, but deny that the territorial boundaries of said Okeechobee Flood Control District are practically the territorial boundaries of Everglades Drainage District, but, on the contrary, these defendants say that the territorial boundaries of said Okeechobee Flood Control District are very much greater in extent than are the territorial boundaries of said Everglades Drainage District.

Defendants deny that the enactment of Chapter 13633, Acts of 1929, substantially, or otherwise, reduced the taxes levied by the prior Everglades Drainage District statutes, and deny that said Chapter 13633, or any other Act of the State of Florida, reduced, or appropriated to any other purpose, any taxes pledged and appropriated as security for the bonds of Everglades Drainage District described in the bill of complaint.

Defendants deny that legislation creating Okeechobee Flood Control District and providing for its government is in anywise related to Chapter 13633, Laws of Florida, Acts of 1929, and deny that the said Chapter 13711 and the said Chapter 13633, Acts of 1929, are, from the viewpoint of the holders of the outstanding bonds of Everglades Drainage District, or from any other viewpoint, one piece of legislation.

15

Answering paragraph 15, defendants admit the passage and contents of Section 1, Chapter 8412, Laws of Florida, Acts of 1921, as alleged in paragraph 15 of the bill, and admit that at the time of the filing of the bill, no taxes were levied upon lands within Everglades Drainage District for [fol. 202] the purpose of meeting the requirements of the outstanding bonds of said District, except statutes under which bonds were authorized to be issued and were issued.

Further answering, defendants say that the total amount of one mill ad valorem tax collections on the tax rolls for the year 1930 was the sum of \$11,868.37; that the amount of one mill ad valorem tax collections on the tax rolls for the year 1931 amounted to \$7,207.75, up to July 1, 1931, and that the total collections of ad valorem taxes on the tax rolls for the year 1931 will not exceed the sum of \$8000.00. The one mill

ad valorem tax is extended upon a considerable amount of property upon which there is no Everglades Drainage District acreage tax levied by law. The amount of said one mill ad valorem tax levied upon each separate parcel of land is small, and when unpaid, the costs of advertising the property covered by it for sale, making the sales thereof and handling the tax sales certificates issued on account of the sales for non-payment of the tax amount to a sum greatly in excess of the proceeds realized from the sales. The amount of said tax averages from 1¢ to 20¢ per parcel of property, and the cost of redemption per parcel of property amounts to from \$2.00 to \$3.00. Defendants aver that the total proceeds from said one mill ad valorem tax are so small and the expenses in connection with the assessment and collection of the tax so large that no revenue can be expected or obtained therefrom to be used by the Board of Commissioners of Everglades Drainage District in the operation of the Everglades Drainage District or in the maintenance of the works of the District.

Further answering, defendants say that the fees required to be paid to the tax assessors by Board of Commissioners of Everglades Drainage District for the extension of Everglades Drainage District taxes upon the tax rolls of the counties which lie wholly or partly within Everglades Drainage District are from ten to twenty thousand dollars annually, and the fees required to be paid to the tax collectors for collecting taxes and making sales of property for non-payment of Everglades Drainage District taxes, are from three thousand dollars to four thousand dollars annually; that the sum required to be paid to defray the costs of advertising of tax sales each year is approximately four thousand dollars; that the minimum sum required annually to maintain the works and property of Everglades Drainage District and prevent deterioration thereof, is in excess of the sum of ninety thousand dollars; that the minimum sum required annually to administer the affairs of the District in the most economical manner, is approximately the sum of thirty-six thousand dollars.

Defendants admit that in the past, the provision requiring the paying each year into a sinking fund, a sum equal to 2% of the outstanding bonds of Everglades Drainage District has not been complied with. Further answering para-

graph 16, defendants say that the plaintiffs have, at all times, had full knowledge of all failures to comply with the said sinking fund provision, and that plaintiffs have accepted payments from Everglades Drainage District of principal and interest upon bonds knowing that the funds being used in making such payment were funds taken from the sinking fund, and by the terms of said provision allotted not only to the payment of principal and interest then falling due, but to the payment of principal and interest yet to fall due and accrue.

Defendants admit that Board of Commissioners of Everglades Drainage District has become indebted to Arundel Corporation in a large sum of money; and that said indebtedness is not evidenced by bonds of Everglades Drainage District. Defendants say that said indebtedness was incurred on account of work performed by Arundel Corporation for Board of Commissioners of Everglades Drainage District in the construction of canals and other works of reclamation within the Everglades Drainage District; and that no payment has been made on said indebtedness since December 17, 1930, when the sum of \$2100.00 was paid on account of past due interest.

Defendants admit that the Treasurer of the State of Florida, as custodian of the funds of Everglades Drainage District, during the latter part of the year 1930, upon warrants drawn on him to meet the expenses of the operation of the District, made payment out of funds held by him in said capacity, and defendants aver that it was his duty so to do, regardless of an imminence of default in payment of the bonds of the District.

Defendants deny that the Board of Commissioners of Everglades Drainage District and the Treasurer of the State of Florida, as custodian of the funds of said District, or either, intend, or have ever intended, that no funds of Everglades Drainage District should be applied to the payment of the principal and interest on the outstanding bonds of the District, except and unless the holders of such bonds should consent to a reduction in the principal and interest of the bonds or to the imposing of any condition concerning the deferment of payment of the principal and interest of the bonds, and deny that the Board of Commissioners of Everglades Drainage District and the Treasurer of the State of Florida, as custodian of the funds of said District, or either, have ever intended that no funds of the District

should be applied to the payment of the District's bonded indebtedness, but that on the contrary, said Board and the Treasurer of the State of Florida, as custodian of the funds of said District, have always been desirous that the said Everglades Drainage — should meet all payments of the [fol. 205] principal and interest of its indebtedness.

Defendants further say that it is untrue that any representative of Everglades Drainage District has ever stated to plaintiffs, or to their representative, that the attitude of Board of Commissioners of Everglades Drainage District was as is alleged in paragraph 16 of the bill, and, on the contrary, aver that representatives of Everglades Drainage District have on many and all occasions on which the matter has been discussed, stated to and assured bondholders and their representatives, that the Board desired and intended to do everything in its power toward the payment of every obligation of the District.

Defendants admit that it has been the position of the Board of Commissioners of Everglades Drainage District that under the law of the State of Florida the Trustees of the Internal Improvement Fund hold the lands bid off to them for non-payment of Everglades Drainage District taxes, as trustees for Everglades Drainage District and were not required by statute to pay taxes thereon.

Defendants say it is untrue that they are willing that any landowner within Everglades Drainage District should not pay the Everglades Drainage District taxes upon his land, but that, on the contrary, defendants have done everything in their power to stimulate tax payments by landowners within Everglades Drainage District and to collect Everglades Drainage District taxes. Defendants further deny that they have ever, either openly or secretly, taken the position that no means should be employed to collect drainage taxes until the bondholders reduced their obligations or deferred the payment of the bonds. Defendants further say that it is not true that they have ever encouraged landowners in the District in refusing to pay drainage taxes or have ever encouraged any landowner in any hope that if taxes are not paid promptly, taxes would be subsequently reduced, or that the indebtedness of the District should be [fol. 206] reduced.

Defendants deny all allegations contained in said paragraph 16 of said bill, in substance and to the effect that there exists, or that there has existed in the past, any collusion

between these defendants and Trustees of the Internal Improvement Fund of the State of Florida, designed to relieve or discharge the said Trustees of the Internal Improvement Fund of the performance of any obligation or duty resting upon the said Trustees with respect to the payment of taxes to Board of Commissioners of Everglades Drainage District; and deny that there has been any disposition upon the part of these defendants to refrain from enforcing performance by the said Trustees of each and every duty resting upon said Trustees with respect to the payment of such taxes.

Defendants specifically deny that in the sale of bonds by Board of Commissioners of Everglades Drainage District any fraud or deception was practiced by the said Board or the members thereof. On the contrary, defendants say that all of said bonds were sold by said Board to Spitzer, Rorick & Company, a bond brokerage concern, of Toledo, Ohio; that H. C. Rorick, one of the plaintiffs in this suit, was, at the times of all sales of Everglades Drainage District bonds, and still is, the principal owner of, the directing head and in active control of, the said Spitzer, Rorick & Company; that J. R. Easton, another of the plaintiffs in this suit, was, at the times of all sales of said bonds, and still is, one of the owners and a directing head of the said Spitzer, Rorick & Company; that the negotiations for the purchase of all bonds of Everglades Drainage District were conducted upon behalf of the said Spitzer, Rorick & Company by the said H. C. Rorick; that at the time of the conducting of said negotiations, the said H. C. Rorick was, and ever since has been, and the said J. R. Easton, for a long number of years, has been thoroughly familiar with the constitution [ch. 207] and laws of the State of Florida in pursuance of which the said Everglades Drainage District was created and the said bonds were authorized to be issued and sold, and the said H. C. Rorick and J. R. Easton, at all of said times, knew that the bonds of the said Everglades Drainage District were in no sense, obligations of the State of Florida, and knew that the statutes in pursuance of which the said bonds were being issued and sold, specifically provided that the said bonds should not be considered obligations of the State.

These defendants further answering the said paragraph of said bill of complaint, say that, notwithstanding the knowledge upon the part of the said H. C. Rorick and of the

said Spitzer, Rorick & Company, of all of the facts aforesaid, the said Spitzer, Rorick & Company caused to be prepared and widely circulated, as these defendants are informed and believe, and therefore charge, for the purpose of inducing persons who were not in possession of the information which was then held by the said H. C. Rorick and the said Spitzer, Rorick & Company to purchase such bonds, a circular or prospectus containing the statement that "in effect the State of Florida guarantees the payment of all drainage taxes, and the bonds payable therefrom."

That the said circular or prospectus and the statements contained therein relate to the bonds of Everglades Drainage District which were purchased by the said Spitzer, Rorick & Company. A copy of said circular or prospectus is hereto attached and by reference made a part of this answer.

These defendants further state that the statement contained in said circular or prospectus, in substance and to the effect that the said bonds were guaranteed by the State of Florida, was false and untrue, and was known by the said H. C. Rorick and the said Spitzer, Rorick & Company, at the [fol. 208] time the said circular or prospectus was circulated, to be false and untrue.

These defendants further say that the written opinion of the Attorney General of Florida, referred to in said circular or prospectus was prepared under the direction of the said H. C. Rorick by counsel for the said Spitzer, Rorick & Company in the City of Toledo, Ohio, and was transmitted by said H. C. Rorick, or by said counsel, to the Attorney General of the State of Florida then in office, with the request that the same be signed, and that, in pursuance of such request, the Attorney General of the State of Florida did sign said opinion, but these defendants say that neither the said opinion nor any other opinion rendered by any Attorney General of the State of Florida, contained any statement in substance or to the effect that the State of Florida is a guarantor for the payment of bonds of Everglades Drainage District, as set forth in said circular or prospectus; that, to the knowledge of these defendants, the only fraud which has been practiced in connection with the sale of bonds of Everglades Drainage District, was practiced by the said H. C. Rorick and the said Spitzer, Rorick & Company.

Defendants admit a substantial sum of money was collected on account of drainage taxes of Everglades Drainage District and received by the Treasurer of the State of Florida, as custodian of the funds of Everglades Drainage District, between November 1, 1930, and April 1, 1931, and aver that the only payments made out of said funds, except in the operation of the District, were for the payment of money theretofore borrowed to pay bonds and interest coupons which matured on July 1, 1930. Defendants deny that no part of the money collected during said period was [fol. 209] paid into the sinking fund and that no part of said funds was reserved for the payment of bonds which matured on January 1, 1931, and on July 1, 1931, and, on the contrary, aver that a sinking fund was maintained from January 1, 1930, until after the enactment and placing into effect of Chapter 14717, Laws of Florida, Acts of 1931. Defendants admit that the State Treasurer, as custodian of the funds of Everglades Drainage District, had on hand at the time the bill was filed, money in the sinking fund applicable to the payment of bonds, and that said funds were not sufficient to pay the principal of the bonds which matured on January 1, 1931.

Defendants admit that plaintiffs brought a suit at law in the United States District Court for the Northern District of Florida to recover a judgment upon certain bonds and coupons which matured January 1, 1931. Defendants are without knowledge as to the intention of the plaintiffs to bring any other suit.

Defendants deny that at the time the bill was filed, or at any other time, the Treasurer of the State of Florida, as custodian of the funds of Everglades Drainage District was engaged in distributing funds held in trust by him for Everglades Drainage District for the payment of bonds. Defendants admit that the Treasurer of the State of Florida, as custodian of the funds of Everglades Drainage District, was, at the times alleged in paragraph 17, disbursing funds necessarily required for the administration, maintenance and operation of the Everglades Drainage District; and aver that in so doing, he was performing his duty as required by law.

Defendants deny that the Board of Commissioners of Everglades Drainage District, in preparing the tax list for

the year 1930, did not include in such lists the lands which had theretofore been bid off by the tax collectors for the Trustees of the Internal Improvement Fund. Defendants admit that in preparing said lists, they set forth taxes at the [fol. 210] rates provided by Chapter 13633, Laws of Florida, Acts of 1929, as they were required by law to do.

Defendants deny that the tax lists which were being prepared at the time the bill was filed under Chapter 6456, Laws of Florida, Acts of 1913, and its amendments, did not include all lands within Everglades Drainage District. Defendants aver that said lists did include all lands within Everglades Drainage District, except exempted lands, whether covered by tax sale certificates issued for the non-payment of Everglades Drainage District taxes or not, and included taxes at the rates provided by Chapter 13633, Laws of Florida, Acts of 1929, and that proceeds from the levy of taxes at said rates would have been, if such taxes had been paid, sufficient to meet bonded debt requirements. Defendants deny that the total taxes levied under the provisions of Chapter 14717, Laws of Florida, Acts of 1931, is less than the total of taxes levied under the statutes under which the plaintiffs' bonds were issued, and further deny that said taxes or any of the taxes when collected and paid over to the State Treasurer become trust funds for the payment of the principal and interest of the outstanding bonds.

[fol. 211]

Supplemental Bill

Specifically answering the supplemental bill filed herein, these defendants say:

1

Defendants admit the filing by the plaintiffs of their original bill, but are without knowledge as to the purpose of the plaintiffs in filing said bill, except as their purpose is revealed by the contents of the bill.

2

Answering paragraph 2, defendants admit the service of subpoenas and appearances as alleged in said paragraph.

3

Answering paragraph 3, defendants admit the enactment by the Legislature and approval by the Governor on May

20, 1931, of the Act referred to by plaintiffs as "Act of May 20th, 1931," which Act now appears as Chapter 14717, Laws of Florida, Acts of 1931. Defendants further admit the title to the Act and the purposes of the Act as set forth in the publication of the notice of introduction thereof.

4

Defendants deny that the constitutional rights of the plaintiffs, as set forth in the original bill, were, in any respect, invaded by the provisions of said Act of May 20, 1931, and specifically deny that they were invaded by any of the sections of the Act referred to in said supplemental bill, but, on the contrary defendants say that the constitutional rights of the plaintiffs were fully safeguarded by the provisions of said Act and the value of the obligations of the plaintiffs' bonds enhanced thereby.

[fol. 212]

4-1

Defendants admit that by Section 2a of Chapter 14717, Laws of Florida, Acts of 1931, the governing board of Everglades Drainage District was made to consist of five persons to be appointed by the Governor, instead of ten persons, who, at the time of the passage of said Act composed the Board of Commissioners of said Everglades Drainage District, and that Marcus A. Milam, W. H. Lair, Ralph A. Horton, C. E. Simmons and T. W. Weeks were appointed by the Governor as members of the Board, and are now duly qualified and acting as such officers.

4-2

Answering sub-paragraph 2, of paragraph 4 of the supplemental bill, defendants say that it is not true that the proceeds of drainage district taxes levied at the rate specified in paragraph 11 of the bill would be sufficient to pay the principal and interest on the bonds and that the lack of funds to be applied in the payment of bonds is not due to insufficiency of rate of levy of taxes, but to failure of landowners to pay taxes.

Defendants deny that it was at the suggestion or on the recommendation of the Board of Commissioners of Everglades Drainage District that the Legislature fixed the rates of levy of taxes provided in Chapter 13633, Laws of Florida, Acts of 1929, and further deny that said Act or its provisions

made the proceeds of drainage taxes insufficient to pay the principal and interest of the outstanding bonds.

Defendants deny that the proceeds of drainage taxes in the hands of the State Treasurer were appropriated and pledged for the payment of bonds of Everglades Drainage District.

[fol. 213] Defendants admit the provisions of section 7 of Chapter 14717, Laws of Florida, Acts of 1931, which levied a tax for the payment of bonds and aver that the rights of creditors were fully protected by said provisions. Defendants deny that any bonds were issued under the provisions of Chapter 10026, Laws of Florida, Acts of 1925, the statute referred to in paragraph 11 of the original bill.

4-3

Defendants admit that tax rolls for the year 1931 were prepared by the Board in accordance with the provisions of Section 48 of Chapter 14717, Laws of Florida, Acts of 1931, and that the rates of taxes set forth therein were those levied by said Act of 1931. Defendants aver that in no event are the plaintiffs entitled to have assessed the rates of levy set forth in paragraph 11 of the bill. Further answering, defendants aver that the total sum which would be made available for payment to bondholders under Chapter 14717, Laws of Florida, Acts of 1931, would be greater than the sum which would be made available for payment to bondholders under the statute referred to in paragraph 11 of the original bill, even were plaintiffs entitled to a levy at the rates set forth in said statute.

4-4

Answering sub-paragraphs 4, 5, 6, 7, 8 and 9 of paragraph 4 of the supplemental bill, defendants admit the provisions of Sections 56 (c), 65 (a), 65 (b), 65 (e), 67 (a), 67 (c) and 67 (d), of Chapter 14717, Laws of Florida, Acts of 1931. Defendants most explicitly and expressly deny each and every of the allegations contained in said paragraphs of any intent or desire on the part of the board or the members thereof, to decrease the security for the bonds of Everglades Drainage District or to reduce the amount of the [fol. 214] proceeds of taxes which would be available for the payment of bonds.

4-10

Answering sub-paragraph 10 of paragraph 4 of the supplemental bill, defendants admit the provisions of Section 70 (a) of Chapter 14717, Laws of Florida, Acts of 1931.

4-11

Answering sub-paragraph 11 of paragraph 4 of the supplemental bill, defendants admit that Section 71 of Chapter 14717, Laws of Florida, Acts of 1931, provides that, in the redemption of land which should be sold to the Board for non-payment of taxes assessed for the year 1930, the person entitled to redeem should have the right to pay the amount required to redeem such land with bonds of Everglades Drainage District the outstanding and/or matured interest coupons attached to such bonds, and that such bonds or coupons should be accepted in lieu of money at the par value thereof.

Defendants deny that the provisions of said section in any way impair the obligation of the plaintiffs' bonds, but on the contrary aver that said provisions do enhance the value of the obligation of plaintiffs' bonds.

Further answering the said original bill and said supplemental bill, defendants say:

That all of the statements and allegations contained in the original bill and supplemental bill in substance and to the effect that the enactment of Chapter 13633, Laws of Florida, Acts of 1929, and of Chapter 14717, Laws of Florida, Acts of 1931, by the Legislature of the State of Florida was designed to promote a plan or scheme for the repudiation of the obligations of Everglades Drainage District evidenced by its outstanding bonds are false and without foundation in fact. These defendants say that from the time of the creation of Everglades Drainage District in 1913, down to the time of the enactment of said Chapter 13633, Acts of 1929, the said Everglades Drainage District was governed by a Board of Commissioners consisting of the Governor and four members of his cabinet, each of whom was required to maintain his office at the seat of government in Tallahassee, which is located approximately five hundred miles from the central portion of Everglades Drainage District; that from the time of the creation of said District until some time during the

year 1925 there was a steady and during special periods a rapid, rise in the market value of lands located within said District, and that the said lands, during said period of time became and were the subject of numerous sales and resales for sums of money which were based primarily and almost wholly upon speculative and not upon the actual value, of such lands. That during the said period of time, ending with the year 1925, and for some time thereafter, taxes were paid upon said lands by the owners thereof, in order that the said lands might be kept available for speculative trading and that the payment of said taxes in most instances was made from the proceeds of profits realized in the speculative trading of said lands and not from the actual products of such lands.

Defendants further show unto the Court that at the time of the creation of said Everglades Drainage District, Trustees of the Internal Improvement Fund of the State of Florida, a state agency, owned a large portion of the lands located within said District, and the said District, if it was to function at all, was dependent in very large measure for its revenue upon the payment of drainage taxes upon said state owned lands by the said Trustees of the Internal Improvement Fund of the State of Florida.

During the period between 1913 and 1926 the said state agency disposed of the major portion of the lands within [fol. 216] said District which had theretofore been in state ownership, so that the major portion of the lands within said District became vested in private ownership.

Defendants further say that by the end of the year 1927, the purchase and sale of lands within said District for the purpose of realizing speculative profits had ceased, and it became apparent that the collection of taxes levied upon privately owned lands within said District would become increasingly difficult.

It also became apparent that inasmuch as all of the land within said District, except approximately 800,000 acres, had passed into private ownership, the owners of such lands were not satisfied to have the governing board of said District and the headquarters thereof located many miles from the scene of actual operation within said District. With this situation before it, the Legislature of Florida which convened in 1929, undertook a partial reorganization of Everglades Drainage District which consisted principally of a change in the personnel of the Board by

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

8

3

4

3

8

-6

9



adding thereto five landowners within said District, to be appointed by the Governor.

When the Legislature of 1931 convened, it was apparent that the percentage of collections of taxes levied for Everglades Drainage District had steadily and rapidly decreased from its peak of 94% of the total levy in 1924 to 27.2% collection of the total levy in 1930. It was also apparent at that time that because of the depletion of the funds at their disposal, Trustees of the Internal Improvement Fund of the State of Florida would no longer be able to make advances of money to the said Everglades Drainage District to aid it in the performance of its functions. This presented a serious situation, because, of the 27.2% of the total levy of taxes for the year 1930 which was collected by [fol. 217] the District, 49.5% of all moneys so collected had been paid by the said Trustees of the Internal Improvement Fund as taxes upon state owned lands.

Under the scheme of organization which was in existence prior to the enactment of Chapter 14717, Acts of 1931, there were levied by law for the said Everglades Drainage District only two taxes, that is to say, an acreage tax, and the one mill ad valorem tax levied under the provisions of Chapter 8412, Acts of 1921. The proceeds of the latter tax were of no practical value to the District, because more than the amount which could be realized from the levy and collection of such taxes was annually consumed in placing such tax upon the tax rolls, making collection thereof, making sales for the non-payment thereof, advertising and other costs and charges incident to the levying, collecting and enforcing of said tax. Therefore, in practical effect the only source of revenue which was available to the said District was the acreage tax levied under the provisions of Chapter 6456, Acts of 1913, as the same had been from time to time amended. The laws then in existence provided that the proceeds of such acreage tax might be used by the Board of Commissioners of said District in pursuance of seven distinct purposes, including the construction and maintenance of canals and other drainage works as in the judgment of the Board might be deemed necessary or advisable to drain and reclaim the lands within the District; the continuation of the construction of such canals and other drainage works as were in process of construction; the purchase of lands or personal property as the Board might

deem necessary to carry out the purposes of the act; the expenses of the Board in the conduct of said work and its business generally; the repayment of any loans and interest thereon; the creation of a sinking fund for the retirement of the principal of bonds of said District; and to the payment of the interest upon such bonds.

[fol. 218] It was clear that in order to properly safeguard the rights and interest of creditors of Everglades Drainage District, and to promote the best interests of the owners of lands within said District a change should be made in the provisions of existing laws which vested in the Board of Commissioners a wide discretion with respect to the expenditure of the tax moneys of the District.

Defendants say that for the primary purpose of limiting the power and discretion of the Board of Commissioners with respect to the expenditure of funds of the District and in order to promote the best interests of the bondholders and creditors of the District, and to increase the security for the payment of the District's obligations Chapter 14717, Acts of 1931, was enacted. The major purposes of the enactment of this statute were made effective by the provisions therein contained that the Board of Commissioners of the District should be composed of five persons who are landowners within the District and who reside either within the District or in territory contiguous thereto, and who should be responsible under their official oaths to the Governor of the State, and subject to suspension and removal by him; and by the provision contained in said statute that instead of the levy of one tax the proceeds of which were to be disbursed by the Board for the seven distinct purposes hereinbefore mentioned and in pursuance of a virtually uncontrolled discretion vested in said Board that there should be levied three separate and distinct taxes, the first to be known as a "Debt Service" tax, the proceeds of which became pledged and set apart and appropriated for the sole purpose of paying the existing obligations of said District, the second an administration tax to be used for the purpose of administering the affairs of the District and paying its expenses generally, and the third, a maintenance tax to be apportioned upon the basis of benefits derived from existing works of said District and [fol. 219] the proceeds thereof to be used solely for the purpose of maintaining such works.

In contrast with the provisions of the laws which were in effect prior to the enactment of said Chapter 14717, defendants say that the enactment of said Chapter 14717 placed a definite and fixed limitation upon the sum of money which might be expended by the Board of Commissioners of said District for the purpose of administering the affairs of the District generally, instead of vesting in the Board a virtually uncontrolled discretion as to the amount of money which should be expended for the said purpose.

Defendants say that under the provisions of said Chapter 14717 there is pledged for the payment of the obligations of said District which were then in existence, not only the proceeds of the collection of the Debt Service tax levied by said Act, but also all tax sale certificates and lands which were theretofore held in trust for Board of Commissioners of Everglades Drainage District by Trustees of the Internal Improvement Fund of the State of Florida, and which tax sale certificates and lands were required by said Chapter 14717 to be transferred to the Board of Commissioners of said District.

Defendants therefore say that the provisions of said Chapter 14717, to which reference has hereinabove been made, did operate and do now operate materially to increase the security of the holders of bonds of Everglades Drainage District, and thereby do materially increase the value of such bonds.

Defendants further show unto the Court that of the total of 4,477,810 acres of land within Everglades Drainage District not over 52,000 acres, that is to say, less than 1% was harvested in 1929, and that the number of acres upon which crops are being planted and brought to harvest has steadily decreased since the said year 1929; that only 74,120 acres of said land, that is to say, 1.7% of the total acreage within said District is designated "crop areas" and only 218,474 [fol. 220] acres of said land, that is to say, 4.9% of the total acreage within said District is suitable at the present time for use in farming operations. It was, therefore, apparent at the time of the convening of the Legislature of 1931 that if the obligations of the District were to be paid there would have to be a material increase in the percentage of collections of taxes levied for the District, and that in all probability such increase could not be realized without the reorganization of the District upon a sound and businesslike basis with a governing Board in close touch

with the landowners, and having no official duties to perform except those appertaining to administering the affairs of said District, and with a fiscal policy established by law which would insure the segregation of moneys of the District into separate and distinct funds appropriated to separate and distinct purposes. It was apparent, also that the assets of Everglades Drainage District consisting of tax sale certificates and lands which were in the hands of Trustees of the Internal Improvement Fund should be transferred to the District and specifically appropriated to the payment of existing obligations of the District, and thereafter administered for the best interests of the District by the governing Board thereof.

It was also apparent at the time of the enactment of said Chapter 14717 that in many instances, because of defaults in the payment of taxes for a number of years the accumulated tax burden upon many thousands of acres of land within said District was greater in amount than the actual market value of such lands, and that it would be impossible for the Board to realize from the accumulated tax liens upon such lands the full amount in money of the principal, interest, costs and charges accrued upon such tax liens.

At the time of the convening of the Legislature in 1931 all of the lands within said District, except small areas in widely scattered locations, were practically without [fol. 221] market value and by reason of the financial plight of the District the bonds of the plaintiffs and other bonds of the District then outstanding were practically without market value and were being offered for sale at less than 25% of their face value.

In addition to instilling confidence in the landowners of the District with respect to the management of the District's affairs and providing as means to that end a sound fiscal policy in pursuance of law, it was apparent that the dormant assets of the District, consisting of said tax sale certificates and land, should be as promptly as possible converted into money or otherwise made available in reducing the outstanding obligations of the District. For this purpose the Legislature enacted Sections 70 and 71 of said Chapter 14717, providing for the use of bonds of said District in the redemption of lands from said outstanding tax sale certificates. These defendants charge that immediately upon the enactment of said Chapter 14717

the market value of the bonds of Everglades Drainage District materially increased and there was established a market for said bonds which was steady and increasing in strength, for a price of from 35% to 50% of the face value of such bonds. These defendants say, therefore, that the enactment of said Chapter 14717, and particularly the enactment of Sections 70 and 71 of said Act, did not impair the obligation of the plaintiffs' bonds, but in fact did materially increase the value of such bonds.

And now having fully answered the bill, supplemental bill, and amendments, defendants pray that the bill and supplemental bill be dismissed and for judgment for their costs in this behalf incurred.

(S.) Carter & Yonge, George C. Bedell, Thos. McE. Johnston, Solicitors for Defendants. Carter & Yonge, Pensacola, Florida; Bedell & Bedell, Jacksonville, Florida; Evans & Mershon, Miami, Florida, of Counsel.

[fol. 222]

EXHIBIT TO ANSWER

Reenlist 1925.

Advance Proof, Subject to Correction.

Free from Federal Income Tax

\$1,000,000

State of Florida

Everglades Drainage District

5% Refunding Gold Bonds—Series A

Receivable by the State Treasurer to Secure State Deposits

Dated July 1, 1925. Denomination \$1,000.—Principal and semi-annual interest, January 1st and July 1st, payable in gold at the office of the State Treasurer or at the National Park Bank in New York City at option of holder. Bonds can be registered with the State Treasurer both as to principal and interest.

Maturities

\$50,000	July 1, 1935
50,000	July 1, 1936
50,000	July 1, 1937
50,000	July 1, 1938
50,000	July 1, 1939
50,000	July 1, 1940
50,000	July 1, 1941
50,000	July 1, 1942
50,000	July 1, 1943
50,000	July 1, 1944
50,000	July 1, 1945
50,000	July 1, 1946
50,000	July 1, 1947
50,000	July 1, 1948
50,000	July 1, 1949
50,000	July 1, 1950
50,000	July 1, 1951
50,000	July 1, 1952
50,000	July 1, 1953
50,000	July 1, 1954

Financial Statement State of Florida

Assessed valuation 1924	\$474,968,042
Bonded Debt, exclusive of Drainage District	
Bonds	None.
Population (1925 State census) 1,253,957..	

The State of Florida is obligated by law to pay and has paid since 1905 the annual drainage taxes expressly levied on all lands owned by the State of Florida within this District and in case the drainage taxes on any other lands in the District are not paid, the title thereto automatically becomes vested in the State of Florida in the absence of other bidders at delinquent tax sale and the State is thereafter obligated to pay the drainage taxes on these lands the same as on all other lands owned by the State within said District so that in effect the State of Florida guarantees the payment of all drainage taxes, and the bonds payable therefrom.

The State of Florida owns approximately one-quarter of [fol. 223] the land within this District, upon which drain-

age taxes are expressly levied under the Statute authorizing these bonds. The District embraces 4,927,759 acres in Southern Florida, including over 90% of the three important Counties of Palm Beach, Dade and Broward, and a large portion of the seven counties of Monroe, Collier, Hendry, Glades, Highlands, Okeechobee and St. Lucie. The total amount of Everglades District bonds outstanding, including this issue, is \$10,250,000. These 5% Refunding Bonds were issued to refund 6% bonds called for payment Nov. 1, 1925 and retired on that date.

These bonds are signed by the Governor, State Treasurer, State Comptroller, Attorney General and Commissioner of Agriculture, the management and control of said District being vested in these State Officials as the Board of Commissioners of Everglades Drainage District.

In the written opinion of the Attorney General of Florida, these bonds are a quasi or indirect obligation of the State in addition to being a direct and general obligation of the entire Everglades Drainage District. Each bond has endorsed thereon the approving opinion of the Attorney General, which under the law makes it incontestable except for forgery.

Price to Pay 4.80%

Spitzer, Rorick & Company,

Established 1871,

Nicholas Building,

Toledo, Ohio

Equitable Building,
New York City.

The Rookery
Chicago, Ills.

The statements contained in this circular are based upon information which we consider entirely trustworthy, but are not guaranteed by us.

[fol. 224] The Everglades Drainage District embraces approximately 4,927,759 acres in Southern Florida, including therein the famous Glades country which is a vast prairie of rich black muck land from two to sixteen feet thick, overlying a limestone and marl formation, which area is already known as the future "sugar bowl" of the U. S., and as

pointed out by Chief Chemist H. H. Wiley of the U. S. Agricultural Department, in his report to Congress in 1892, this area is the only one in the United States adapted both by soil and climate to successfully compete with Cuba in the production of sugar and semi-tropical fruits. In addition, it produces in great abundance practically every known grain, vegetable and forage crop grown in the temperate and semi-tropical zones, oftentimes producing two and three crops in a single year.

This reclamation project is the largest and most important within the United States and it can be safely said that it has been the most economically and ably administered. This work has been carried on by the State since the creation of this District in 1905 from monies contributed by the State, from taxes levied within the District, and from the proceeds of bonds issued since 1917. Practically all of the lands embraced within this District, were originally ceded by the U. S. Government to the State of Florida by an act of Congress passed in 1850, which act imposed upon the State the obligation of reclaiming these lands. Shortly after this grant the Florida Legislature passed an act creating a State Board, known as the Internal Improvement Board, to hold title to these lands in trust for the State. The Governor, State Treasurer, State Comptroller, Attorney General and Commissioner of Agriculture, ex-officio constitute this Board. These same officials likewise constitute the Board of Commissioners of Everglades Drainage District, in which Board is vested the management and control of said District. The lands within this District are now owned by approximately 45,000 different owners and have an estimated present value of \$250,000,000. [fol. 225] The State of Florida now owns approximately one-quarter of the lands within this District upon which drainage taxes have been expressly levied by Statute. The law also provides that in case the drainage taxes on any other lands in the District are not paid the title thereto automatically becomes vested in the State of Florida in the absence of other bidders at delinquent tax sale and the State is thereafter obligated to pay the drainage taxes on these lands, the same as on all other lands owned by the State within said District. In practical effect therefore, the State guarantees the payment of all Everglades Drainage taxes and the bonds payable therefrom.

This District has a most remarkable record for payment of taxes, which is not equalled by that of any municipality in the United States within our knowledge, full 100% having been paid for every year from the organization of the Drainage District in 1905 down to and including the taxes due and payable April 1st, 1925. The total tax levy payable on April 1st, 1925, and amounting to \$1,168,711, was paid by the property owners with the exception of only \$1,438, this amount being only about one-tenth of one per cent of the total levy. In other words, the property owners paid 99.9% of the full tax levy. Since then the State, which under the law is obligated to pay any and all delinquent taxes, has paid this small balance, thus making tax collections full 100%.

Everglades drainage taxes have been levied by an act of the Legislature at the time of authorizing each issue of bonds and are annual and perpetual levies which cannot be repealed until all bonds are paid. These taxes are unusually small and unburdensome, the levy for the past year being only 5¢ to 82¢ per acre. The lien of these taxes is co-equal with that of State and County Taxes. This levy for the year 1924, payable on April 1st, 1925, amounted to \$1,168,711. The levy for the present year, 1925, (payable (April 1st, 1926), and thereafter has been increased by the Legislature that adjourned June 6, 1925, and will produce [fol. 226] a much larger revenue. These drainage taxes are much more than sufficient to retire all bonds and coupons heretofore authorized by the Legislature as they mature. In addition to the foregoing specific and perpetual acreage taxes, the law authorizes the levy of an ad valorem tax on all real and person-property within the District for maintenance.

There is no question as to the demonstrated success of this drainage project, which was a very simple one from an engineering standpoint as Lake Okeechobee was twenty feet above sea level, all canals flowing by force of gravity to the Ocean and Gulf. Since the opening in 1924 of the St. Lucie control canal, owners of land can now safely go ahead with sub-drainage and agricultural development work of all kinds, there now being available over 1,000,000 acres of land suitable for such cultivation, a large portion of which has been under cultivation for several years past, producing large crops of all kinds of produce. The system of drainage include approximately 400 miles of canals from

60 feet to 275 feet wide which are now open, together with the necessary locks, levees and dams to control the waters of Lake Okeechobee.

Construction work was largely carried on from 1905 to 1917 by cash contributions from the State and from tax levies upon the lands within the District, the first bonds being sold and issued early in 1917. The total amount of bonds issued to date is \$11,250,000, all maturing serially and not exceeding thirty years from their date, of which \$1,000,000 have already matured and been paid, leaving now outstanding \$10,250,000 of which \$3,800,000 bear 5% interest and the remaining \$6,450,000 bear $5\frac{1}{2}\%$ and 6%.

[fol. 227] IN UNITED STATES DISTRICT COURT

ANSWER OF ROSS C. SAWYER, AS CLERK OF THE CIRCUIT COURT OF MONROE COUNTY, ET AL.—Filed November 14, 1932

Come now Ross C. Sawyer, as Clerk of the Circuit Court of Monroe County, E. B. Leatherman, as Clerk of the Circuit Court of Dade County, Frank A. Bryan, as Clerk of the Circuit Court of Broward County, Fred E. Fenno, as Clerk of the Circuit Court of Palm Beach County, J. R. Pomerooy, as Clerk of the Circuit Court of Martin County, P. C. Eldred, as Clerk of the Circuit Court of St. Lucie County, L. T. Farmer, as Clerk of the Circuit Court of Highlands County, Doris S. Weeks, as Clerk of the Circuit Court of Glades County, William T. Hull, as Clerk of the Circuit Court of Hendry County, Josh L. Barber, as Clerk of the Circuit Court of Okeechobee County, and E. W. Russell, as Clerk of the Circuit Court of Collier County, and for answer to the bill, supplemental bill, and amendments, say that they are without knowledge as to the allegations therein contained, and pray the judgment of the Court that the cause be dismissed as to them, and that they be allowed their costs herein incurred.

Carter & Yonge, Pensacola, Florida; George C. Bedell, Jacksonville, Florida; Thos. McE. Johnston, Miami, Florida, Attorneys for Said Defendants. Carter & Yonge, Pensacola, Florida; Bedell & Bedell, Jacksonville, Florida; Evans & Mershon, Miami, Florida, of Counsel.

IN UNITED STATES DISTRICT COURT

MOTION OF BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT TO VACATE ORDER OF SEPTEMBER 6, 1932—
Filed December 6, 1932

Comes now Board of Commissioners of Everglades Drainage District, and moves the Court to vacate the order [fol. 228] entered herein on the 5th day of September, 1932, and as cause for said motion respectfully shows unto the Court that in and by the terms of said Order, the Court enjoined and restrained the defendants pending the final determination of this cause, from doing certain acts set forth in said order, and provided that the order should become effective upon the plaintiffs giving bond to the defendant Board of Commissioners of Everglades Drainage District and the defendant Trustees of the Internal Improvement Fund and the defendant Clerks of the Circuit Courts, in the penal sum of \$50,000.00; that a reasonable time has elapsed for the filing by the plaintiffs of the bond required by said order to be filed, and the plaintiffs have not availed themselves of the terms of said order by the filing of an injunction bond, as required thereby, or as more fully appears by the Certificate of the Clerk of this Honorable Court hereto attached.

Carter & Yonge, Bedell & Bedell, Evans & Mershon,
Sols. for Board of Commissioners of Everglades
Drainage District. Carter & Yonge, Pensacola,
Fla. Bedell & Bedell, Jacksonville, Fla. Evans
& Mershon, Miami, Fla.

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

I, F. W. Marsh, Clerk of the United States District Court in and for the Northern District of Florida, do hereby certify that no bond has been filed in the above styled cause by the plaintiffs up to the date of this certificate.

Dated this — day of December, 1932.

F. W. Marsh, Clerk, by — — —, Deputy Clerk.

IN UNITED STATES DISTRICT COURT

MOTION TO REDUCE AMOUNT OF BOND—Filed December
20, 1932

[fol. 229] And now come the complainants and show to the Court as follows:

1. That the giving of the Fifty Thousand Dollar bond to make effective the temporary restraining orders or injunctions granted by the decree of September 6, 1932, by a Court constituted under the provisions of Section 266 of the Judicial Code, imposes a burden and expense upon the complainants out of proportion to any probable damage to the defendants, or any of them, if the said bond should be given and the injunctions thereby made effective and afterwards dissolved.

2. That at the time of the making of the said order the defendants had recovered against the defendant Board of Commissioners of Everglades Drainage District in the United States District Court for the Northern District of Florida a judgment for more than One Hundred Eighty-Four Thousand Dollars, which judgment remains of full force and effect and upon which they have not been able to collect anything.

3. That the amount of the judgment referred to is in excess of all sums of money belonging to the defendant Board of Commissioners of Everglades Drainage District, or to such District, in the hands of the State Treasurer at the time of the making of the order of September 6, 1932, and at any time since, so that no necessity appears for the giving of so large a bond.

4. That the premium required to be paid to a surety company for such bond is the sum of Five Hundred Dollars annually during the life of the bond, which is a burden on the complainants the severity of which they conceive is out of proportion to any probable benefit to the defendants by reason of such bond.

Wherefore the complainants move the Court to modify paragraph 9 of the said order of September 6, 1932, so as to reduce the bond therein required to an amount not in excess of Ten Thousand Dollars, or such other amount as the [fol. 230] Court upon hearing shall deem reasonable and just.

Wm. Roberts, Watson & Pasco & Brown, Solicitors
for Complainants.

AFFIDAVIT OF W. H. WATSON

STATE OF FLORIDA,
County of Escambia:

W. H. Watson being duly sworn on oath says that he is one of the solicitors for the complainants making the foregoing motion; that the judgment recovered by the complainants in the District Court of the United States for the Northern District of Florida mentioned in paragraph 2 of the above motion is a judgment recovered on the 10th day of May, 1932, on defaulted bonds and coupons of the defendant Board and District, which judgment was for the sum of \$184,349.00, no part of which has been paid; that at or about the time of the recovery of the said judgment the affiant was informed by the State Treasurer that the balance of funds of the Everglades Drainage District in his hands was slightly in excess of Sixty Thousand Dollars; that recently affiant has been informed by said Treasurer that the amount of funds in the hands of said State Treasurer belonging to the defendant Board and District, was, in round numbers, Ninety Thousand Dollars; that the amount is stated in round numbers because the letter giving the information has been mislaid, but affiant's recollection is that the same was Ninety Thousand Dollars plus some few hundred; that affiant has made inquiry as to the amount of premium charged by surety companies on bonds given to make restraining orders or injunctions effective and is advised that the premium for a \$50,000.00 bond would be the sum of Five Hundred Dollars annually for each and every year of the life of the bond, and that such bond would not be made for applicants not shown to be amply solvent to the satisfaction of the issuing company without the deposit of collateral; that the premium on smaller amounts is proportionately reduced, so that the annual premium on a \$10,000.00 [fol. 231] bond be about One Hundred Dollars per year of the life of the bond.

W. H. Watson.

Sworn to and subscribed before me this 20th day of
December, 1932. L. M. Waite, Notary Public.
(Seal.)

IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION FOR REDUCTION IN AMOUNT OF BOND,
ETC.—February 23, 1933

This cause coming on for hearing on the supporting affidavits and motion of the defendant Board of Commissioners of Everglades Drainage District to vacate the restraining order herein made on the 6th day of September, 1932, which order was to become effective upon the Complainants giving bond as required in paragraph 9 thereof, and also coming on for hearing on the supporting affidavits and motion of the complainants to modify paragraph 9 of the said order of September 6, 1932, so as to reduce the bond therein required, and having submitted on briefs of counsel and considered by the Court:

It is Now Ordered:

1. That the motion of the complainants for reduction in the amount of the bond be and the same is hereby denied.

2. That the motion of the defendant Board of Commissioners to vacate the said order be and the same is hereby denied, upon condition however that the complainants furnish the bond heretofore required within 15 days from the date hereof; and if such bond is not furnished within said time that the Order of September 6, 1932, be vacated and set aside.

Done and Ordered this 23rd day of February, 1933.

[fol. 232] N. P. Bryan, United States Circuit Judge.

Wm. B. Sheppard, United States District Judge.

Louis W. Strum, United States District Judge.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION OF THE PLAINTIFFS FOR SUBSTITUTION OF PARTIES, AND LEAVE TO FILE SECOND SUPPLEMENTAL BILL OF COMPLAINT—July 16, 1937

The above styled and entitled cause coming on for hearing on the motion of H. C. Rorick, Joseph R. Grundy and J. R. Easton for an order substituting Joseph R. Grundy as a party plaintiff in the place and stead of Walter H.

Lippincott, now deceased, and substituting Fred P. Cone as Governor of the State of Florida, and J. M. Lee as Comptroller of the State of Florida, in the place and stead of Doyle E. Carlton and Ernest Amos, respectively, as defendants, and substituting as defendants the various individuals who have become Clerks of the Circuit Courts of counties wholly or partly in Everglades Drainage District since the filing of the first supplemental bill, and for leave to file a second supplemental bill of complaint now tendered to the Court, and it appearing to the Court that the Attorney General of the State of Florida and the Assistant Attorneys General, as Solicitors for the defendant Trustees of the Internal Improvement Fund of the State of Florida, and Fred E. Bryant, Esquire, as Solicitor for the defendant Board of Commissioners of Everglades Drainage District, have consented to the entry of an order substituting the said Joseph R. Grundy as plaintiff, and certain state officials as defendants, and that the said Fred E. Bryant, Esquire, as Solicitor for said defendant Board of Commissioners has also consented to the entry of an order making the present Clerks of the Circuit Courts of the various counties wholly or partly in Everglades Drainage District [fol. 233] parties defendant in the place and stead of any defendant Clerks of such Circuit Courts named in the first supplemental bill of complaint whom such present clerks have succeeded in office, and it further appearing that due notice has been given the Solicitors for the defendants of the motion for leave to file said second supplemental bill of complaint, and that this order shall be made; therefore

It is Ordered:

(1) That since the commencement of this suit Walter H. Lippincott has died and the whole of his right, title and interest in the bonds and coupons of Everglades Drainage District upon which this litigation is founded has been transferred to and vested in Joseph R. Grundy, a citizen and resident of the State of Pennsylvania, and the said Joseph R. Grundy is hereby substituted as a party plaintiff in the place and stead of the said Walter H. Lippincott.

(2) That since the commencement of this suit Fred P. Cone has become Governor of the State of Florida, and J. M. Lee has become Comptroller of said state, and as such they have become members of the Trustees of the Internal Improvement Fund of the State of Florida, and they are

hereby made parties defendant to this cause in the place and stead of Doyle E. Carlton and Ernest Amos, respectively.

(3) That, since the filing of the original and supplemental bills of complaint, Ernest R. Bennett has become the Clerk of the Circuit Court of Broward County, George O. Butler has become Clerk of the Circuit Court of Palm Beach County, W. R. Lott has become the Clerk of the Circuit Court of St. Lucie County, W. Z. Carson has become the Clerk of the Circuit Court of Highlands County, J. L. Barber has become Clerk of the Circuit Court of Okeechobee County, and Edmond F. Scott has become the Clerk of the Circuit Court of Collier County, and they are hereby made and substituted parties defendant to this cause in the place and stead of their respective predecessors in office for said respective counties.

(4) That this cause, with the substituted parties hereby made, proceed in due course.

(5) That leave be and is hereby granted the said H. C. Rorick, Joseph E. Grundy and J. R. Easton as plaintiffs to file said second supplemental bill of complaint against the Board of Commissioners of Everglades Drainage District, a corporation organized and existing under the laws of the State of Florida; W. V. Knott, as Treasurer of the State of Florida, as custodian of the funds of Everglades Drainage District; Fred P. Cone, as Governor of the State of Florida; J. M. Lee, as Comptroller of the State of Florida; W. V. Knott, as Treasurer of the State of Florida; Cary D. Landis, as Attorney General of the State of Florida; and Nathan Mayo, as Commissioner of Agriculture of the State of Florida, as and constituting the Trustees of the Internal Improvement Fund of the State of Florida; Ross C. Sawyer, as Clerk of the Circuit Court, J. Otto Kirchheimer, as Tax Assessor, and Frank H. Ladd, as Tax Collector of Monroe County; E. B. Leatherman, as Clerk of the Circuit Court, N. Lummus, Jr., as Tax Assessor, and Hayes Wood, as Tax Collector of Dade County; Ernest R. Bennett, as Clerk of the Circuit Court, L. O. Hanson, as Tax Assessor, and F. O. Berryhill, as Tax Collector of Broward County; George O. Butler, as Clerk of the Circuit Court, James L. Owens, Jr., as Tax Assessor; and Stetson O. Sproul, as Tax Collector, of Palm Beach County; J. R. Pome-

roy, as Clerk of the Circuit Court, A. C. Coursen, as Tax Assessor, and L. C. Kickliter, as Tax Collector, of Martin County; W. R. Lott, as Clerk of the Circuit Court, E. R. Pierce, as Tax Assessor, and Orris Nobles, as Tax Collector of St. Lucie County; W. Z. Carson, as Clerk of the Circuit Court, P. G. Gearing, as Tax Assessor, and Ruth Bass Hilton, as Tax Collector, of Highlands County; Doris S. Weeks, as Clerk of the Circuit Court, I. E. Scott, as Tax Assessor, and J. P. Moore, as Tax Collector of Glades County; William T. Hull, as Clerk of the Circuit Court, Dennis Small, as Tax Assessor, and Frank A. Dougherty, as Tax Collector of Hendry County; J. L. Barber, as Clerk of the Circuit Court, Robert LaMartin, as Tax Assessor, and Bessie Alderman, as Tax Collector of Okeechobee County; and Edmond F. Scott, as Clerk of the Circuit Court, D. W. McLeod, as Tax Assessor, and C. H. Collier, as Tax Collector of Collier County, the said counties being counties of the State of Florida, wholly or partly in Everglades Drainage District.

It is Further Ordered that the defendants to the original and supplemental bills of complaint in this cause, and their successors in office, be and are hereby required to appear and answer the said second supplemental bill of complaint on or before the 16th day of August, 1937, the said successors in office to appear and answer in place and stead of the original defendants whom they have succeeded in office; and that subpoena issue for service on the various Tax Assessors and Tax Collectors made parties defendant to said second supplemental bill.

Done and Ordered at Gainesville, Florida this 16th day of July, 1937.

(S.) A. V. Long, District Judge.

[fol. 236] IN UNITED STATES DISTRICT COURT

SECOND SUPPLEMENTAL BILL OF COMPLAINT—Filed July 19, 1937

Leave having been granted the plaintiffs by this Honorable Court to file this their second supplemental bill of complaint, they thereupon further complain, and making all of the averments and showing unto the court the same facts which are set forth in the original bill of complaint filed

by H. C. Rorick, Walter H. Lippincott, and J. R. Easton, as complainants, and in the first supplemental bill of complaint filed by said last named complainants, allege and show as follows, to-wit:

(1) They repeat and re-allege, and incorporate herein by reference to the same extent as if herein fully set forth at length, the allegations numbered 1, 2, and 3 of the first supplemental bill of complaint as amended, renewing the prayers made in their original bill of complaint, the plaintiffs further prayed, among other things: that this court determine that the Trustees of the Internal Improvement Fund of the State of Florida held and hold Everglades Drainage District tax sale certificates and lands bid off to them by the county tax collectors, in their own right and not as trustees for the Board of Commissioners of Everglades Drainage District, and that said Trustees are obligated to pay cash for said tax sale certificates and to pay the taxes on said lands bid off to them as part of the obligation of the bond contract; that this court determines that said Trustees of the Internal Improvement Fund are obligated to buy in lands offered for sale by the county tax collectors for non-payment of drainage taxes and not bid in by other purchasers; that this court enjoin said Trustees [fol. 237] of the Internal Improvement Fund from transferring Everglades Drainage District tax sale certificates or the lands represented thereby to the Board of Commissioners of Everglades Drainage District or the said Board of Commissioners from accepting the same and directing said Board to retransfer tax sale certificates and lands represented thereby to said Trustees of the Internal Improvement Fund in so far as any transfer or conveyance of the same had been made by said Trustees to said Board of Commissioners; that this court enjoin said Board of Commissioners of Everglades Drainage District from selling any tax sale certificates or lands represented thereby which had been transferred to said Board of Commissioners by the said Trustees of the Internal Improvement Fund or bid off to said Board of Commissioners by the county tax collectors and that this court direct a transfer and conveyance of such tax sale certificates and the lands represented thereby to the said Trustees of the Internal Improvement Fund; and that this court make its order enjoining

the said Board of Commissioners of Everglades Drainage District from making or delivering any certificates of indebtedness to said Trustees of the Internal Improvement Fund under the provisions of the Act of May 20, 1931, enjoining said Trustees from receiving or accepting any such certificates of indebtedness, enjoining the said Board of Commissioners from receiving such certificates of indebtedness or any other obligations of the Everglades Drainage District in payment of drainage taxes levied in said District, enjoining said Trustees of the Internal Improvement Fund from negotiating such certificates of indebtedness or from using said certificates of indebtedness or any obligation of said District other than cash in the payment of drainage taxes in Everglades Drainage District by the said Trustees, enjoining said Trustees of the Internal Improvement Fund from disposing of the property held by them as such Trustees, except in accordance with the statutes of the State of Florida in force at the time the bonds of Everglades Drainage District were issued, directing said Trustees of the Internal Improvement Fund to pay to said [fol. 238] Board of Commissioners of Everglades Drainage District all amounts due from the said Trustees for tax sale certificates bid off to them and the lands represented thereby and in the event said Trustees fail to pay such amounts in full, directing an accounting to be made by said Trustees of the Internal Improvement Fund.

Upon the said original bill of complaint as amended, and the said first supplemental bill of complaint as amended, a hearing was had on January 13, 1932 upon the application of plaintiffs for an interlocutory injunction herein, before this court, three judges being convened for such hearing, and on April 13, 1932, a decision was rendered by this court, in which the relief requested by plaintiff was in many respects granted, as appears from the opinion of this court filed April 13, 1932. Pursuant to such decision and opinion, an interlocutory order and decree was thereafter made by this court on September 6, 1932; on February 23, 1933, a motion by the Board of Commissioners to vacate the order and decree of September 6, 1932, for failure to file a bond in the amount of \$50,000 therein required to make effective the injunction therein granted, was denied on the condition that the bond be filed within a fixed period of time, otherwise it was directed that the order of September 6, 1932 be

vacated and set aside; the said bond was not filed by plaintiffs.

Thereafter, in accordance with the commands of a peremptory writ of mandamus issued by the Supreme Court of the State of Florida, in a proceeding entitled State ex rel. J. H. Sherrill and D. A. Vann vs. Marcus A. Milam, et al., constituting Board of Commissioners of Everglades Drainage District, et al., upon the petition of certain holders of matured bonds and interest coupons of the Everglades Drainage District, the Board of Commissioners of said District prepared and sent to the respective tax assessors of the counties in said district, tax lists setting forth the rates of taxes upon the lands within said Everglades Drainage District, which were levied by the statutes of the State of Florida in effect at the time when the bonds of said District were authorized to be issued and were issued, and [fol. 239] the tax assessors and tax collectors of the counties lying within the Everglades Drainage District performed their respective duties as prescribed by the said statutes, in respect of the assessment and collection of the said drainage taxes levied upon lands within the District.

(2) Since the filing of the original bill of complaint herein as amended, and the first supplemental bill of complaint as amended, and since the rendering by this court of its decision on the application of the plaintiffs for an interlocutory injunction herein, Walter H. Lippincott, one of the plaintiffs herein, has died, and the whole right, title, and interest of said deceased plaintiff in the bonds and coupons of Everglades Drainage District upon which the present cause of action is founded, has been duly transferred to and vested in the plaintiff Joseph R. Grundy, a citizen and resident of the State of Pennsylvania, who thereupon became entitled to be substituted as a plaintiff in the place and stead of the said Walter H. Lippincott; that since the filing of the first supplemental bill of complaint by H. C. Rorick, Walter H. Lippincott, and J. R. Easton as complainants, Ernest R. Bennett has become Clerk of the Circuit Court of Broward County, George O. Butler has become clerk of the Circuit Court of Palm Beach County, W. R. Lott has become the Clerk of the Circuit Court of Highlands County, and J. L. Barber has become Clerk of the Circuit Court of Okeechobee County, and are made parties defendant to this second supplemental bill of complaint in the

place and stead of the Clerks of the Circuit Courts for said several counties named in the first supplemental bill of complaint as amended.

(3) At the session of the Legislature of the State of Florida for the year 1937, and after the filing of the bill of complaint herein and the supplemental bill of complaint as amended, and after the decision of this Court was rendered on the application for interlocutory injunction, there was enacted a statute entitled:

[fol. 240] "An Act to amend Chapter 14717, Acts of the Legislature of Florida of 1931, same being a revision of all laws relating to Everglades Drainage District, and particularly Section 2 as amended by Chapter 16993, Acts of 1935, so as to provide for the appointment of a treasurer of said district by the Board of Commissioners, and defining his duties and powers: Also by amending Sections 5, 7, 8, 52, 53 and 54 as amended by Chapter 16993, Acts of 1935; repealing Section 71 of said act; changing the zones of said district for the purposes of taxation as defined by said Chapter 14717; levying taxes and special assessments for Everglades Drainage District upon the lands therein according to said amended zones; to provide for the collection of such taxes and assessments; providing for the cancellation of certain taxes and tax liens outstanding against said lands within said district, and the cancellation of certain assessments against lands hereafter acquired by the Federal Government for park and reservation purposes, and to exempt future taxes on such lands; declaring the rights of said district in and to certain properties acquired and used, and authorizing the Board of Commissioners to make rules and regulations for the use, maintenance, and "operation of its properties: and providing penalties for the violation of such regulations and provisions of this Act."

which statute, so far as valid, became effective on June 10, 1937, the date of the approval thereof by the Governor of the State of Florida, which statute will hereafter be referred to as the Act of June 10, 1937. The said Act was procured to be introduced as a special or local law by the defendant Board of Commissioners and the purpose thereof was stated in the published notice in the introduction thereof, as follows:

**"Notice of Intention to Apply for Passage of Special or
Local Legislation.**

Notice is Hereby Given That at the regular biennial Session of the Legislature of Florida, to convene in April, 1937, application will be made for the passage of a Special or Local Law, the substance of which will be as follows:

A bill to be entitled An Act relating to Everglades Drainage-District declaring the existence of such District; validating its creation and declaring its boundaries; providing for its government, and for the appointment of a Board of Commissioners therefor, and fixing the compensation of said Commissioners; defining the duties and powers of such Board; levying taxes and special assessments for Everglades Drainage District upon the lands therein, and providing for the collection of such taxes and special assessments; amending Chapter 14717, Laws of 1931, as amended by Chapter 16993, Laws of 1935, as to the manner of sales of lands for the non-payment of such taxes and assessments; to provide for the collection of such taxes and assessments at the same time and in the same manner as State and County taxes; repealing Section 7-47 inclusive thereof; amending Sections 48-54 inclusive, 62-67 inclusive, subsection (b) of Sections 68, 69, 71-79, inclusive thereof; and repealing Sections 81, 82, 84-100, inclusive, of said Act of 1931 as amended; providing for the maintenance of works heretofore constructed by Everglades Drainage District; providing authority in said Board for the prevention and control of fires within said District; providing for the issuance of bonds to refund debts of said District; providing for the cancellation of certain taxes and tax liens outstanding against lands within said District; authorizing the compromise and settlement of certain certificates and other indebtedness outstanding against said District; amending and revising and re-enacting into one Act, the former Laws relating to Everglades Drainage District in conformity with said Act.

By Order of the Board of Commissioners of Everglades Drainage District.

Alfred H. Wagg, Chairman; F. E. Byrant, Attorney."

(4) By the aforesaid Act of June 10, 1937, various changes were made in the statutes theretofore enacted pertaining to

Everglades Drainage District, and the rights of the plaintiffs, as set forth in their original bill of complaint and in the first supplemental bill were further invaded and the obligation of their bonds was further impaired, in that:

(1) By Section 2 (a) of said Act of June 10, 1937, the governing board of said district is made to consist of five persons to be appointed by the Governor, instead of the five principal officers of the State of Florida, who composed the Board of Commissioners under all the Acts of the State of Florida by which the bonds of the district were authorized to be issued and were issued, and instead of the ten persons, five of whom were such principal officers of the State of Florida, who composed the Board of Commissioners under Chapter 13633 of the Laws of Florida of 1929. The Board of Commissioners of the district, as at present constituted pursuant to the Act of 1931, is composed of the following four members, Alfred H. Wagg having died, to-wit:

James H. Franklin,
H. L. Lyons,
J. P. Newell,
James F. Beardsley.

By Section 2 (h) of said Act of June 10, 1937, the Board of Commissioners is authorized and directed to appoint a suitable person as Treasurer of the district, who shall be the custodian of all moneys, securities and bonds belonging to [fol. 242] the district, instead of the Treasurer of the State of Florida, a constitutional officer and one of the principal state officials, who, by all prior acts pertaining to Everglades Drainage District, had been made the Treasurer of the District, and the custodian of all moneys belonging to the district. Under the Acts of the State of Florida, prior to the Act of June 10, 1937, by which the Treasurer of the State of Florida was made the Treasurer of the district and the custodian of its funds, the said Treasurer was required to perform the services of Treasurer of the district and custodian of its funds without compensation. By Section 2 (i) of the said Act of June 10, 1937, it is provided that the Secretary of the district and the Treasurer of the district may be one and the same person, that the salary of the Secretary shall not exceed the sum of \$200 per month as Secretary, but the Board of Commissioners may allow him additional com-

pensation for his services as Treasurer, in the event he shall be appointed to perform the duties of both offices as therein provided.

(2) As alleged in paragraph 11 of the original bill of complaint herein, drainage taxes were levied by the statute on lands in Everglades Drainage District at the rates specified in said paragraph 11, which taxes were levied for the purpose of paying principal and interest of the bonds of said district outstanding and were sufficient for that purpose (if realized and so used); the proceeds of drainage taxes in the hands of said State Treasurer were, by the statutes which authorized the bonds of the said district to be issued and under which the bonds of said district were issued, and the said taxes were levied, set apart, appropriated and pledged for the payment of said bonds, and the State Treasurer as custodian of the funds of the district was required by the statute to apply the proceeds of said taxes to the payment of the principal and interest of the outstanding [fol. 243] bonds of the said district.

By Chapter 13633 of the Laws of 1929, as set forth in paragraph 13 of the bill of complaint herein, the legislature of Florida, at the suggestion and on the recommendation of the defendant Board of Commissioners, reduced the drainage taxes levied by the said statutes under which the bonds of said district were authorized to be issued and were issued (without the consent of the holders of bonds theretofore issued) to the rates per acre set forth in said paragraph 13, and thus made the proceeds of the drainage taxes insufficient to pay the principal and interest of the outstanding bonds. Thereafter, interest on the outstanding bonds and certain of the principal thereof matured and became due and payable on January 1, 1931, and on dates subsequent thereto, and only a small part of said interest and of said principal has been paid, and a substantial part of said interest and of said principal is now over due and is unpaid.

By said Act of May 20, 1931, being Chapter 14717, which became effective, so far as valid, since the filing of the bill of complaint herein, the Legislature of Florida repealed the drainage tax which had theretofore been levied for the payment of the outstanding bonds of the district and the proceeds of which had been pledged for such payment, and the legislature by Section 7 of said Act of May 20, 1931, levied drainage taxes for the purpose of paying principal

and interest on said outstanding bonds, the language of said section being:

“* * * to pay the principal and interest of all obligations of Everglades Drainage District heretofore incurred and now outstanding.”

at substantially reduced rates and which are substantially inadequate to provide for the payment of the overdue bonds and interest thereon and for the payment of the principal and interest of said bonds as the same mature, and complain- [fol. 244] ants are informed and believed, and therefore allege, that the said Board of Commissioners suggested and recommended to the Legislature the rates of drainage taxes provided in section 7 of said Act of May 20, 1931, with the knowledge that such taxes would be substantially inadequate to pay the principal and interest of the outstanding bonds. The drainage taxes levied under said Act of May 20, 1931 vary from the maximum of 49¢ per acre to \$.0134 per acre as against taxes levied by the statutes under which the bonds were issued, as set forth in paragraph 11 of the original bill of complaint, which vary from a maximum of \$1.50 per acre to 10¢ per acre.

By said Act of June 10, 1937, which became effective, so far as valid, since the filing of the bill of complaint herein, and of the supplemental bill of complaint, the Legislature of Florida amended said Act of May 20, 1931, and by Section 2 and by Section 3 of the said Act of June 10, 1937, the Legislature levied drainage taxes upon certain of the lands within said district for the purpose of enabling the Board of Commissioners to pay the principal and interest of all obligations of the district, including said outstanding bonds of the district, the language of said section being:

“* * * to pay the principal and interest of all obligations of Everglades Drainage District heretofore incurred and now outstanding and any refunding bonds hereafter issued.”

at rates substantially reduced below the rates at which taxes were levied by the statutes under which the bonds of the district were authorized to be issued and were issued, and which rates of taxes levied by said Act of June 10, 1937, are substantially inadequate to provide for the payment of the overdue bonds and the interest thereon and for the pay-

ment of the principal and interest of said bonds as the same shall mature in the future, and complainants are informed and believe and therefore allege, that the said Board of [fol. 245] Commissioners suggested and recommended to the Legislature the rates of taxes levied by said Sections 2 and 3 of said Act of June 10, 1937, with the knowledge that such taxes would be substantially inadequate to pay the principal and interest of the outstanding bonds. In so far as the said Act of June 10, 1937, purports to reduce the rates and amounts of drainage taxes levied, set apart, appropriated and pledged for the payment of the bonds and interest coupons of Everglades Drainage District by the Statutes of the State of Florida, under which the bonds of the district were authorized to be issued and were issued, the said Act of June 10, 1937 impairs the obligation of the contract of the holders and owners of such bonds and coupons. The drainage taxes levied under said Act of June 10, 1937, vary from the maximum of 90¢ per acre to 3¢ per acre as against drainage taxes levied by the statutes under which the bonds were issued, as set forth in paragraph 11 of the original bill of complaint, which vary from a maximum of \$1.50 per acre to 10¢ per acre. The complainants allege that the total amount of the acreage taxes levied upon the lands within the district by the statutes under which the bonds of the district were issued amount in the year 1937 to approximately \$2,250,000, and the complainants allege on information and belief that the total amount of taxes levied by the said Act of June 10, 1937, for the year 1937 is approximately \$595,000, and that the amount of acreage taxes levied by the statutes under which the bonds of the district were issued for the year 1937, have been reduced by the said Act of June 10, 1937, by approximately \$1,655,000. The total amount of the principal of the bonds of the district which was overdue and unpaid on April, 1937, without including interest upon interest, is approximately the sum of \$2,938,557, and that the amount overdue and unpaid in respect of [fol. 246] the principal and the interest of the outstanding bonds of the district at the date of the filing of this second supplemental bill of complaint was substantially in excess of the foregoing amounts. By the statute of June 10, 1937, the amount of taxes levied for the year 1937 and for each of the subsequent years is substantially less than is sufficient to pay the principal of the bonds and the interest thereon, which would mature in the given year, without applying any

part of said taxes to the payment of the principal of the bonds or the interest thereon which had matured prior to the year 1937, and now remains unpaid.

(5) By Section 4 of the said Act of June 10, 1937, the Legislature of the State of Florida enacted that for the purpose of paying the cost of administering the affairs of the District generally, there is thereby levied and imposed upon lands within Everglades Drainage District lying and situate within certain zones as therein before described, a special tax or assessment at specified rates per acre. By the said Section 4 of the said Act of June 10, 1937, there is further levied and assessed upon all real, personal and mixed property in Everglades Drainage District a one mill ad valorem tax, and it is stated in said Section 4 that the taxes levied and imposed by that section shall be known collectively, as the "Administration Tax." By the said Section 4 of the said Act of June 10, 1937, it is then further enacted as follows:

"Such other funds as may be received by the Board, and not by this Act specifically appropriated or allocated to other funds, shall become a part of the administration fund."

In and by the statutes of the State of Florida, by which the bonds of the Everglades Drainage District were authorized to be issued and were issued as more fully set forth in paragraph 12 of the original bill of complaint herein, it was made the duty of the State Treasurer or his successor in office to pay the principal and interest of said bonds [fol. 247] issued by the district out of the proceeds of all acreage taxes levied and imposed by said statutes and out of any other moneys in his possession belonging to the said Board or to the said Everglades Drainage District, all of which moneys, so far as necessary, are set apart, appropriated and pledged for that purpose.

(6) By Section 5 of the said Act of June 10, 1937 the Legislature of the State of Florida enacted that it shall be the duty of the Tax Assessor of each of the several counties embraced in whole or in part within said Everglades Drainage District to receive the list therein required to be certified to him by the Secretary and he shall enter upon the tax roll of the county of which he is the Tax As-

essor the total amount of the taxes and assessments shown by said list to be assessed and imposed upon each parcel of land within such county for the year for which the said list is furnished. It is further provided in said section 5 of the said Act of June 10, 1937, that the Tax Assessor shall attach to said tax roll for each of said years a special warrant to the Tax Collector of such county for the collection of said taxes and assessments and such special warrants shall be signed by the Tax Assessor.

The duties of the Tax Assessor of each of the several counties embraced in whole or in part within said Everglades Drainage District referred to and set forth in said section 5 of the Act of June 10, 1937, are in respect of tax lists, showing taxes and assessments to be assessed and imposed upon the lands within such county for the year for which such list is furnished, which have been prepared by the Board of Commissioners of Everglades Drainage District in accordance with the rates and amounts of said taxes prescribed in Sections 2 and 3 of said Act of June 10, 1937, and the other duties of the said Tax Assessor of each of the said counties are in respect of his entering upon his county tax rolls, and attaching to said tax roll and signing a special warrant to the Tax Collector of such county for the collection of the acreage taxes and assessments set forth in sections 2 and 3 of said Act of June 10, 1937, which [fol. 248] are *there- therein* levied and imposed upon the lands within the District at rates and in amounts substantially less than the rates and amounts of such acreage taxes and assessments levied and imposed by the statutes of the State of Florida, under which the bonds of the District were authorized to be issued and were issued, and which are substantially less than sufficient to pay the principal and interest of said bonds maturing annually, for the payment of which such taxes and assessments were levied, imposed, set apart, appropriated and pledged by said statutes, as hereinbefore alleged in paragraph 4 of this supplemental bill, and as more fully set forth in paragraphs 11 and 12 of the original bill of complaint herein.

(7) By Sections 6 and 7 of the said Act of June 10, 1937, the Legislature of the State of Florida prescribed certain duties of the Tax Collectors of each of the several counties embraced in whole or in part within said Everglades Drainage District, in respect of the collection of, issuing receipts

for, making returns to the Board of Commissioners of Everglades Drainage District concerning, and paying over to the Treasurer of the District the proceeds as collected of the acreage taxes and assessments set forth in Section 2 and 3 of said Act of June 10, 1937 which are therein levied and imposed upon the lands within the District at rates and in amounts substantially less than the rates and amounts of such acreage taxes and assessments levied and imposed by the statutes of the State of Florida under which the bonds of the District were authorized to be issued and were issued, and which are substantially less than sufficient to pay the principal and interest of the said bonds maturing annually, for the payment of which such acreage taxes and assessments were levied, imposed, set aside, appropriated and pledged by said statutes, as hereinbefore alleged in paragraph 4 of this supplemental bill, and as more fully set forth in paragraphs 11 and 12 of the original bill of complaint herein.

(8) By Section 9 of the said Act of June 10, 1937, the [fol:249] Legislature of the State of Florida enacted that in connection with the effectuation and consummation of any compromise, refinancing or refunding of the indebtedness of said Everglades Drainage District, the Board of Commissioners is authorized and empowered to compromise, adjust or cancel without payment, any and all Everglades Drainage District taxes against the lands within said district, levied by the laws of the State of Florida for the years 1936 and prior years, and held and owned by the Board of Commissioners of Everglades Drainage District, by proper resolution of said Board of Commissioners setting forth the manner and terms upon which said compromise, adjustment or cancellation has been or will be made, and provided for the means and manner of clearing the record as to such liens under the provisions of said Act of June 10, 1937, and that the Board of Commissioners of the district and the Trustees of the Internal Improvement Fund of the State of Florida are, by said statute, given authority to enter into such agreements and make such settlements between them as, in the discretion of said two Boards may seem just and expedient in the consummation of any debt refunding or adjustment plans negotiated by said Board of Commissioners. By the Acts of the State of Florida under which the bonds of said district were

authorized to be issued and were issued, the acreage taxes imposed by said statutes for the years 1936 and prior years were set apart, appropriated and pledged for the payment of said bonds, and there was no power reserved by the Legislature of the State of Florida to authorize and empower the Board of Commissioners of said district to compromise, adjust, or cancel without payment, any of said taxes.

(9) By Section 10 of said Act of June 10, 1937, the Legislature of the State of Florida enacted that in the event that any of the lands described in the zones set forth in section 2 of said statute shall be or become the property of the United States Government, or under the control, management and maintenance of the United States Government [fol. 250] ment, the Board of Commissioners is authorized and empowered by resolution of the Board to cancel any and all liens and assessments against such property and to exempt said lands from future Everglades Drainage District taxes and assessments, so long as said lands may remain the property or under the control of the United States Government. By the statutes of the State of Florida under which the bonds of Everglades Drainage District were authorized to be issued and were issued, no power was reserved by the Legislature of the State to authorize or compel the Board of Commissioners of said district to cancel acreage taxes levied by said statutes upon lands within said district, or to exempt said lands from future taxes and assessments imposed by said statutes.

(10) By Section 11 of said Act of June 10, 1937, the said Legislature enacted that the Board of Commissioners of said district shall have the power and authority from time to time to provide by resolution that the time within which tax sale certificates or other tax liens representing taxes levied for the year 1936 or any prior year held by such Board, may be redeemed, shall be extended for a total period not to exceed two years from the date that said Act of June 10, 1937 became a law, and that such redemption may be made within the period of time fixed by such Board of Commissioners by the payment of the principal amount of taxes evidenced by said tax sale certificate or secured by any such tax lien plus interest thereon, at the rate of eight per centum per annum, from the date upon which such tax sale certificate was issued or such tax lien became evi-

denced. By the statutes under which the bonds of Everglades Drainage District were authorized to be issued and were issued, and the proceeds of the acreage taxes were set apart, appropriated and pledged for the payment of the bonds of said District, the Legislature of the State of Florida reserved no right to give power to the Board of Commissioners of said District to extend the time for the redemption of tax sale certificates or other liens representing taxes. The legislature of the State of Florida in and by the following acts, purported to extend the time for the redemption of tax sale certificates or tax liens representing acreage taxes levied for the year 1931 or any prior year: Chapter 16288, Laws of Florida of 1933, purported to authorize the Governing Board or Commission of each Drainage or Sub-Drainage District in the State of Florida, apparently including the Board of Commissioners of the Everglades Drainage District, to provide by resolution for an extension of the time for redemption of such tax sale certificates or tax liens for a total period not to exceed two years from the date said Act became a law, said act thereafter becoming a law without the governor's approval; Chapter 17430, Laws of Florida of 1935, purported similarly to authorize an extension of the time for redemption for a total period not to exceed two years from the date said Act became a law, said act being approved by the governor on June 8, 1935.

(11) By Section 12 of said Act of June 10, 1937, the Legislature of the State of Florida enacted that in the payment or redemption of any tax sale certificate or tax lien representing taxes levied for the year 1936, or any prior year, held by the Board of Commissioners of said district, bonds and/or matured interest coupons or other obligations of such district shall be receivable at par, and in lieu of money in payment of the sum of money required to be paid in effecting such redemption except so much or any part of such sum of money required to be paid as is applicable under the law primarily or solely to maintenance of the works and improvements of the district or to the administration of its affairs shall be payable solely in cash, and the fees of public officers chargeable by law in connection with any such redemption shall also be paid in cash. By the statutes of the State of Florida under which the bonds of said District were authorized to be issued and

were issued, and the proceeds of the acreage taxes levied [fol. 252] by said statutes were pledged for the payment of said bonds, the Legislature of the State of Florida did not reserve the right to provide by subsequent statute that bonds and/or coupons or other obligations of such drainage District should be receivable at par and in-lieu of money in payment of the sum of money required to be paid by the statutes under which the bonds were issued in the payment or redemption of tax sale certificates or tax lien representing acreage taxes levied for the year 1936, or any prior year, held by the Board of Commissioners of said District.

(12) Upon information and belief the plaintiffs allege that since the said Act of June 10, 1937 the defendant Board of Commissioners has instructed the Tax Collectors of the various above named counties to cease remittance of their collections of drainage taxes to the State Treasurer, as custodian of the funds of the Board of Commissioners of Everglades Drainage District and of said District, as required by the legislation under which all the bonds of said District were issued and to make remittances of all moneys collected by them for drainage taxes and under the various acts relating to said Everglades Drainage District to the said Board or to some person designated by it to receive the same.

Wherefore, plaintiffs pray that they may have the same relief against the defendants as they might have had if the matters and things hereinbefore stated and charged by way of this their second supplemental bill of complaint had happened before the filing of their original bill of complaint and their first supplemental bill of complaint herein, and had been stated and charged therein, and renewing the prayers made in their original bill and in the first supplemental bill, further respectfully pray:

(1) That your Honor will make such orders and decrees, preliminary or final, as are prayed for in and by the original bill of complaint, and the first supplemental bill of complaint.

(2) That this Court make an order substituting Joseph R. Grundy as one of the plaintiffs herein in the place and [fol. 253] stead of Walter H. Lippincott, deceased, and substituting as defendants, Ernest R. Bennett, as Clerk of the

Circuit Court of Broward County, George O. Butler, as Clerk of the Circuit Court of Palm Beach County, W. R. Lott, as Clerk of the Circuit Court of St. Lucie County, W. Z. Carson, as Clerk of the Circuit Court of Highlands County, J. L. Barber, as Clerk of the Circuit Court of Okeechobee County, and C. H. Collier, as Clerk of the Circuit Court of Collier County, in the place and stead of the Clerks of the Circuit Courts of said counties named in the first supplemental bill of complaint.

(3) That this court make an order enjoining and restraining the defendant Board of Commissioners of Everglades Drainage District from preparing and forwarding to the tax assessors of the respective counties in which lands of the District lie, tax lists for the year 1937 or for any other year, unless such tax lists shall include all the lands of Everglades Drainage District lying in said counties on which acreage taxes are levied and imposed by the statutes of the State of Florida under which bonds of the Everglades Drainage District were authorized to be issued and were issued, and unless such tax lists shall include acreage taxes on all such lands at the rates and in the amounts levied and imposed by the said statutes, and by the said statutes set apart, appropriated and pledged for the payment of said bonds and the interest thereon.

(4) That this court make an order enjoining and restraining the defendant Tax Assessors of each of the several counties embraced in whole or in part within the Everglades Drainage District from receiving any tax lists prepared by the Board of Commissioners of Everglades Drainage District, or from entering upon their respective tax rolls any taxes or assessments shown by said lists to be assessed and imposed upon each parcel of land within their respective counties for the year for which said lists are furnished, or from attaching to their respective tax rolls for [fol. 254] that year or from signing a special warrant to the Tax Collectors of said counties for the collection of any such taxes and assessments, unless such tax lists shall include taxes and assessments on all the lands within said District, at the rates and in the amounts, levied and imposed upon said lands by the statutes of the State of Florida under which bonds of the District were authorized to be issued and were issued.

(5) That this court make an order enjoining and restraining the defendant Tax Collectors of each of the several counties embraced in whole or in part within said Everglades Drainage District from collecting any drainage taxes or assessments certified by the Board of Commissioners of Everglades Drainage District to the tax assessors of said counties, or from issuing any receipts for such drainage taxes, or from making any returns to said Board in respect of Everglades Drainage District acreage taxes or assessments, or from paying over to the Treasurer of the District any proceeds of said taxes, unless such acreage taxes and assessments certified by said Board to said Tax Assessors include acreage taxes and assessments on all the lands within said District, at the rates and in the amounts levied and imposed upon said lands by the statutes of the State of Florida under which the bonds of the District were authorized to be issued and were issued; and also making an order enjoining and restraining the defendant tax collectors of each of the several counties embraced in whole or in part in said Everglades Drainage District from remitting acreage taxes and other taxes of Everglades Drainage District and any other moneys collected by them to any person other than the Treasurer of the State of Florida, as custodian of the funds belonging to the Board of Commissioners of Everglades Drainage District, and to said District.

[fol. 255] (6) That this court make an order enjoining and restraining the defendant Board of Commissioners from compromising, adjusting or cancelling without payment any Everglades Drainage District taxes levied by the statutes of the State of Florida for the year 1936 and prior years upon lands within said Everglades Drainage District.

(7) That this court make an order enjoining and restraining the defendant Board of Commissioners and defendant Trustees of the Internal Improvement Fund of the State of Florida from entering into any agreements or making any settlements between them in the consummation of any debt refunding or adjustment plans negotiated by said Board of Commissioners, to the extent that such agreements or settlements impair any rights of the holders of the bonds and coupons of said District now outstanding, or the taxes levied, set apart, appropriated and pledged for the payment of such bonds and the interest thereon by the

statutes under which the bonds were authorized to be issued and were issued.

(8) That this court make an order enjoining and restraining the defendant Board of Commissioners from cancelling any acreage tax liens and assessments upon property in said Everglades Drainage District, which property shall be or become the property of the United States Government, or under the control, management or maintenance of the United States Government, which were levied and imposed by the statutes of the State of Florida under which the bonds of said Everglades Drainage District were authorized to be issued and were issued, and the proceeds of which acreage taxes and assessments were by the provisions of said statutes set apart, appropriated and pledged for the payment of the bonds so issued.

(9) That this court make an order enjoining and restraining the defendant Board of Commissioners of said Everglades Drainage District from changing or providing a [fol. 256] time within which tax sale certificates or other tax liens representing acreage taxes levied for the year 1936 or any prior year upon lands within said Everglades Drainage District may be redeemed, which time is different from that fixed by the statutes of the State of Florida under which bonds of said Everglades Drainage District now outstanding were authorized to be issued and were issued, said acreage taxes having been levied and imposed by said statutes and the proceeds of said acreage taxes having been set apart, appropriated and pledged by said statutes for the payment of the bonds so issued.

(10) That this court will be pleased to order, adjudge and decree that the said Act of June 10, 1937, impairs the obligation of the contract of the bonds of Everglades Drainage District now outstanding, which bonds were issued under the statutes of the State of Florida by which acreage taxes were levied and imposed and by which the proceeds of said Acreage taxes were set apart, appropriated and pledged for the payment of said bonds, and that said Act of June 10, 1937, is void as against plaintiff and other holders of said bonds and interest coupons.

(11) That this court will find, order and determine that it is part of the obligation of the contract of holders of bonds and coupons of Everglades Drainage District, created

by the statutes of the State of Florida under which said bonds and coupons were authorized to be issued and were issued, that the five principal state officers of the State of Florida, namely the Governor, the Comptroller, the State Treasurer, the Attorney General, and the Commissioner of Agriculture of said State shall be members of the Board of Commissioners of Everglades Drainage District and subject to the duties placed by said statutes upon said officers of the State of Florida in respect of the issue of bonds of Everglades Drainage District and the levy, imposition, collection and payment over of the proceeds of the acreage taxes by said statutes levied, imposed, set apart, appropriated and pledged for the payment of said bonds and the interest thereon; and that it is part of the obligation of the said contract of the holders of said bonds and coupons that the State Treasurer of the State of Florida shall be the custodian of the moneys and funds of the Board of Commissioners of Everglades Drainage District and of the District subject to the duties imposed by said statutes, upon the said officer of the State of Florida in respect of the custody, application and payment over of the proceeds of the acreage taxes levied and imposed by said statutes for the payment of the bonds of the District and the interest thereon, for which purpose the proceeds of the said acreage taxes were set apart, appropriated and pledged by the said statutes.

(12) That this court make an order enjoining and restraining the defendant Board of Commissioners of Everglades Drainage District and the defendant Clerks of the Circuit Courts of the various counties which include any lands of the Everglades Drainage District from accepting any bond or interest coupons or anything other than money in the redemption of any tax sale certificates heretofore or hereafter issued, or tax liens heretofore or hereafter imposed for the non-payment of Everglades Drainage District acreage taxes and in the redemption of any lands that may be sold for the non-payment of any taxes.

(13) That this court make an order commanding and directing the Board of Commissioners of Everglades Drainage District to make, prepare, and forward to the Tax Assessors of the respective counties in which lands of the District lie, tax lists for the year 1937, and for each subsequent year, which include all the lands lying in said coun-

ties on which acreage taxes are levied and imposed by the statutes of the State of Florida under which the bonds of [fol. 258] the Everglades Drainage District were authorized to be issued and were issued, and which include acreage taxes on all such lands at the rates and in the amounts levied and imposed by the said statutes, and by the said statutes set apart, appropriated and pledged for the payment of said bonds and the interest thereon.

(14) That pending this suit the court make temporary restraining orders against the defendants enjoining them respectively, pending this suit, in the particulars prayed in the prayers hereinabove numbered 3, 4, 5, 6, 7, 8, 9, and 12, and that on final hearing such temporary restraining orders be made perpetual.

(15) That the process of this court may issue out of and under the seal of this court, returnable as required by law, directed to and for service upon the defendants, W. V. Knott, Treasurer of the State of Florida, as Custodian of the Funds of Everglades Drainage District; J. Otto Kirschheiner, as Tax Assessor, and Frank H. Ladd, as Tax Collector of Monroe County; J. N. Lummus, Jr., as Tax Assessor, and Hayes Wood, as Tax Collector of Dade County; L. O. Hanson, as Tax Assessor, and W. O. Berryhill, as Tax Collector of Broward County; James M. Owens, Jr., as Tax Assessor, and Stetson O. Sproul, as Tax Collector of Palm Beach County; A. C. Courson, as Tax Assessor, and L. C. Kickliter, as Tax Collector of Martin County; E. R. Pierce, as Tax Assessor, and Orris Nobles, as Tax Collector of St. Lucie County; P. G. Gearing, as Tax Assessor, and Ruth Bass Hylton, as Tax Collector of Highlands County; I. E. Scott, as Tax Assessor, and J. P. Moore, as Tax Collector of Glades County; Dennis Small, as Tax Assessor, and Frank A. Dougherty, as Tax Collector of Hendry County; Robert LaMartin, as Tax Assessor, and Bessie Alderman, as Tax Collector of Okeechobee County; D. W. McLeod, as Tax Assessor, and C. H. Collier, as Tax Collector of Collier County, the said several counties enumerated being counties [fol. 259] in the State of Florida, commanding them, and each of them, upon a day therein to be named to make full, true, and perfect answer unto this second supplemental bill of complaint, and the original and first supplemental bill of complaint herein (answer under oath being waived), and that the defendants to the said original bill of complaint

and the first supplemental bill of complaint herein, or their successors in office who are by this court substituted as defendants herein in place and stead of said defendants, may be required to make answer hereto (but not under oath, oath to their answers being waived) without further service of process, and further that the defendants stand to, abide by and perform such other and further orders and decrees, general or special, temporary or final, in the premises as equity may require.

(S.) William Roberts, (S.) Watson & Pasco & Brown,
Solicitors for Plaintiffs. Presented this July 16th,
1937. A. V. Long, Judge.

IN UNITED STATES DISTRICT COURT

MOTION OF TRUSTEES TO DISMISS—Filed August 16, 1937

Come now Fred P. Cone, as Governor of the State of Florida; J. M. Lee, as Comptroller of said State; W. V. Knott, as State Treasurer of said State; Cary D. Landis, as Attorney General of said State, and Nathan Mayo, as Commissioner of Agriculture of said State, as and constituting the Trustees of the Internal Improvement Fund of the State of Florida, defendants in the above entitled cause, who will hereafter be referred to as Trustees, by their solicitors and respectfully move the Court to dismiss the [fol. 260] above styled suit in so far as the same relates to these defendants upon the following points of law arising upon the face of the original and supplemental Bills of Complaint and amendments thereto filed in said cause, to-wit:

First. The original and supplemental Bills of Complaint, as amended, do not allege or state any grounds for equitable relief against the Trustees.

Second. There is a misjoinder of parties in that the Trustees are neither necessary or proper parties to said suit.

Third. The original and supplemental Bills, as amended, as the same relate to the Trustees state conclusions of the pleader, for which there is no basis in law.

Fourth. This is in effect a suit against the State of Florida in so far as the same relates to the liability of the

Trustees for taxes on lands "bid off" for them, and is not authorized by any law.

Fifth. Section 23 of Chapter 6456, Laws of Florida, Acts of 1913, now section 1557, Compiled General Laws of Florida, 1927, provides the summary method of mandamus for bondholders to enforce and compel the performance of duties required by the Everglades Drainage District statutes.

Sixth. The Trustees are not required by law to pay the taxes on lands "bid off" for them by the Tax Collectors until such taxes are paid by redemption or sale of the lands.

Seventh. The Trustees, in the absence of statute, are without authority to bind themselves to pay taxes on lands "bid off" for them.

Eighth. The Trustees, after the expiration of the redemption period, hold title to lands "bid off" to them in trust for the Board of Commissioners of Everglades Drainage [fol. 261] District and for the purpose of enforcement of payment of taxes due

Ninth. It is within the province of the Legislature to provide adequate means to enforce payment of taxes and enforce liens evidenced by tax sale certificates after expiration of redemption period.

Tenth. Everglades Drainage District tax certificates issued to the Trustees are merely evidence of liens for unpaid and past due taxes held in trust for the Board of Commissioners of Everglades Drainage District as beneficiaries of such taxes.

Eleventh. Tax certificates give the right to convey the lands only for the purpose of enforcing the payment of delinquent taxes and unless the certificate is redeemed as provided by law.

Twelfth. The Trustees do not own the lands except through the tax sale and as agents of the Board of Commissioners of Everglades Drainage District and do not purport to convey it except as a means of enforcing the right of the Board of Commissioners of Everglades Drainage District to collect taxes duly levied on the lands in the district.

Thirteenth. No statutory or constitutional right of bondholders is violated by failure of the Trustees to pay taxes on lands "bid off" for them by Tax Collectors.

Fourteenth. No organic right of complainants is abridged or violated by either Section 56 (c), 65 (a), 65 (b), 65 (e) of Chapter 14717, Laws of Florida, Acts of 1931.

Fifteenth. No obligation of the State to drain the particular lands of the Everglades Drainage District was recognized [fol. 262] by the enactment of Chapter 610, Laws of Florida, approved January 6, 1855.

Sixteenth. By the enactment of Chapter 610, approved January 6, 1855, the general assembly recognized its obligation under the Constitution, as it then existed, to assist in the construction of a system of transportation in the State.

Seventeenth. Bonds issued by the Everglades Drainage District are obligations of such district and are not obligations of the State of Florida or the Trustees of the Internal Improvement Fund of the State of Florida.

Eighteenth. In view of the limitations contained in Section 6 of Article IX of the State Constitution neither the State of Florida nor the Trustees of the Internal Improvement Fund of the State of Florida, a State agency, can legally pay or obligate to pay bonds of the Everglades Drainage District.

Nineteenth. The laws authorizing the issuance of Everglades Drainage District bonds cannot and do not pledge or loan the credit of the State to the Everglades Drainage District or for the payment of Everglades Drainage District bonds.

Twentieth. Under Section 10 of Article IX of the State Constitution neither the State nor the Trustees of the Internal Improvement Fund of the State of Florida, a State agency, can pledge or loan its credit to any holders of Everglades Drainage District bonds.

Twenty-first. The alleged agreement of the Trustees to advance or pay the taxes on lands "bid off" for them was gratuitous and not by virtue of any requirement of law.

Twenty-second. It does not appear from the allegations [fol. 263] of the original and supplemental and amended Bills of Complaint that Spitzer-Rorick and Company kept or performed their part of the alleged agreement to purchase Five Million Seven Hundred Thousand Dollars (\$5,700,000.00) refunding bonds and One Million Two Hundred

and Fifty Thousand Dollars (\$1,250,000:00) new bonds of the Everglades Drainage District in consideration of which it is alleged that the Trustees agreed to pay taxes on lands "bid off" for them.

Twenty-third. By Chapter 5577, Acts of 1905, Chapter 5709, Acts of 1907, and Chapter 6456, Acts of 1913, and subsequent Acts relating to the same subject, it was the legislative intent and purpose that the expense of draining and reclaiming swamp and overflowed lands should be borne by the lands in the particular district sought to be drained or reclaimed.

Twenty-fourth. Only the faith, credit and resources of the Everglades Drainage District were pledged for the payment of its bonded indebtedness.

Twenty-fifth. Section 3 of Chapter 7305, Laws of Florida, Acts of 1917, now Section 1541, Compiled General Laws of Florida, 1927, did not obligate the Trustees to pay the drainage taxes on lands "bid off" for them by the Tax Collectors or subsequent taxes thereon.

Twenty-sixth. By Section 13 of Chapter 6456, Laws of Florida, Acts of 1913, now Section 1542, Compiled General Laws of Florida, 1927, only voluntary bidders are required to make immediate payment on lands "struck off" to them by the Tax Collectors, and there is no requirement in said Section or any other law for payment of taxes by the Trustees immediately or at any time on lands "bid off" for them by the Tax Collectors until the Everglades Drainage District [fol. 264] tax certificates on said lands issued to the Trustees are redeemed or sold, as provided by law.

Twenty-seventh. The original and supplemental Bills of Complaint, as amended, in effect seek to make bonds of the Everglades Drainage District State obligations contrary to Section 6 of Article IX of the State Constitution.

Twenty-eighth. Under the provisions of Section 3 of Chapter 7305, Laws of Florida, Acts of 1917, now Section 1541, Compiled General Laws of Florida, 1927, lands "bid off" for the Trustees shall be held in like manner and with like effect as lands sold to the State for non-payment of State and County taxes are held by the State.

Twenty-ninth. By Section 16 of Chapter 6456, Laws of Florida, Acts of 1913, as amended, now Section 1546, Com-

piled General Laws of Florida, 1927, the proceeds of the sale and redemption of lands "bid off" for the Trustees are held in trust by them for the Board of Commissioners of Everglades Drainage District to be applied to the payment of the drainage taxes for which assessments were made, and to the obligations and expenses incident to the administration of said law as agents of said Board.

Thirtieth. The Trustees hold the title to lands "bid off" for them in trust for the benefit of the object for which such taxes were levied.

Thirty-first. By Section 8 of Chapter 6456, Laws of Florida, Acts of 1913, as amended, now Section 1537, Compiled General Laws of Florida, 1927, it is provided: "Except as herein specifically provided, all laws relating to State and County taxes in this State are hereby made applicable to the Everglades Drainage District." And this applies to the method of carrying on the assessment roll lands "bid off" [fol. 265] for the Trustees without extending the taxes.

Thirty-second. The powers and duties of the Trustees, as an agency of the sovereign State, are prescribed and limited by statute and cannot be exceeded and the powers and duties of the Trustees, as an agency of the Everglades Drainage District and particularly with relation to lands "bid off" to them in such agency, are also prescribed and limited by statute and cannot be exceeded.

Thirty-third. It does not appear that the alleged proposal of Spitzer-Rorick and Company to purchase bonds of the Board of Commissioners of Everglades Drainage District, as set forth in paragraph 13 of the original Bill, was consummated or that Spitzer-Rorick and Company kept and performed their part of such alleged agreement.

Thirty-fourth. It is not alleged that the bonds of the complainants were bought on the strength of the alleged agreement of the Trustees to pay the taxes on lands "bid off" for them.

Thirty-fifth. The Trustees are not voluntary bidders or purchasers of lands sold for non-payment of Everglades Drainage District taxes but are required by law to receive and have the custody of the tax certificates issued thereon as a medium for the collection of such delinquent taxes and as agents of the Board of Commissioners of Everglades Drainage District.

Thirty-sixth. Under the provisions of Section 3 of Chapter 7305, Laws of Florida, Acts of 1917, now Section 1541, Compiled General Laws of Florida, 1927; the Trustees are mere agents of the Everglades Drainage District for the holding of tax certificates and the collection of delinquent Everglades Drainage District taxes.

[fol. 266] Thirty-seventh. There is no statute authorizing or requiring the Trustees to pay the taxes on lands "bid off" for them, except from receipts from redemption or sale of tax certificates under Section 1546, Compiled General Laws of Florida, 1927.

Respectfully submitted, (S.) Cary D. Landis, Attorney General; (S.) H. E. Carter, Assistant Attorney General; (S.) M. C. McIntosh, Assistant Attorney General, Solicitors for Defendants, Trustees of the Internal Improvement Fund of the State of Florida.

[fol. 267] IN UNITED STATES DISTRICT COURT

MOTION OF BOARD OF COMMISSIONERS ET AL. TO DISMISS—Filed
October 14, 1937

Come now the defendants, Board of Commissioners of Everglades Drainage District, a corporation organized and existing under the laws of the State of Florida; W. V. Knott, as Treasurer of the State of Florida, as Custodian of the funds of Everglades Drainage District; Ross C. Sawyer, as Clerk of the Circuit Court, J. Otto Kirchheiner, as Tax Assessor, and Frank H. Ladd, as Tax Collector of Monroe County; E. B. Leatherman, as Clerk of the Circuit Court, J. N. Lummus, Jr., as Tax Assessor, and Hayes Wood, as Tax Collector of Dade County; Ernest R. Bennett, as Clerk of the Circuit Court, L. O. Hanson, as Tax Assessor, and W. O. Berryhill, as Tax Collector of Broward County; George O. Butler, as Clerk of the Circuit Court, James M. Owens, Jr., as Tax Assessor, and Stetson O. Sproul, as Tax Collector of Palm Beach County; J. R. Pomeroy, Clerk of the Circuit Court, A. C. Courson, as Tax Assessor, and L. C. Kickliter, as Tax Collector of Martin County; W. R. Lott, as Clerk of the Circuit Court, E. R. Pierce, as Tax Assessor, and Orris Nobles, as Tax Collector of St. Lucie County; W. Z. Carson, as Clerk of the Circuit Court, P. G.

Gearing, as Tax Assessor, and Ruth Bass Hylton, as Tax Collector of Highlands County; Doris S. Weeks, as Clerk of the Circuit Court, I. E. Scott, as Tax Assessor, and J. P. Moore, as Tax Collector of Glades County; William T. Hull, as Clerk of the Circuit Court, Dennis Small, as Tax Assessor, and Frank A. Dougherty, as Tax Collector of Hendry County; J. L. Barber, as Clerk of the Circuit Court; Robert LaMartin, as Tax Assessor, and Bessie [fol. 268] Alderman, as Tax Collector of Okeechobee County; and Edmond F. Scott, as Clerk of the Circuit Court, E. W. McLeod, as Tax Assessor, and C. H. Collier, as Tax Collector of Collier County, the said several counties enumerated being counties in the State of Florida; and interpose this, their joint and several motion to dismiss the above entitled action, and to dismiss the Complainants' original supplemental and second supplemental bills of complaint and amendments thereto filed in said cause, insofar as the same relate to these defendants, jointly and severally, upon each and every of the following several grounds:

First. The original supplemental and second supplemental bills of complaint as amended do not allege or state any grounds for equitable relief against said defendants.

Second. The original supplemental and second supplemental bills of complaint as amended consist of the conclusions of the pleader for which there is no basis in law.

Third. Section 23 of Chapter 6456, Laws of Florida, Acts of 1913, now Section 1557, Compiled General Laws of Florida, provides the summary method of mandamus for bondholders to enforce and compel the performance of duties required under the Everglades Drainage District Statutes.

Fourth. It is within the province of the Legislature to provide adequate means to enforce payment of taxes and enforce liens evidenced by tax sales certificates after expiration of the redemption period.

Fifth. It is not made to appear how the said Act of June 10th, 1937 impairs the obligation of the contract of the bonds of the Everglades Drainage District now outstanding.

Sixth. The Legislature may prescribe the methods of enforcing or of carrying out the provisions of the statutes of [fol. 269] the Everglades Drainage District.

Seventh: No organic right of Complainants is violated by either Section 2(a), 2(h) or 2(i) of the Act of June 10th, 1937.

Eighth. No organic right of complainants is violated by either Section 2 or Section 3 of the Act of June 10th, 1937.

Ninth. No organic right of complainants is violated by Section 4 of the Act of June 10th, 1937.

Tenth. No organic right of complainants is violated by Section 5 of the Act of June 10th, 1937.

Eleventh. No organic right of complainants is violated by Section 6 of the Act of June 10th, 1937.

Twelfth. No organic right of complainants is violated by Section 9 of the Act of June 10th, 1937.

Thirteenth. No organic right of complainants is violated by Section 10 of the Act of June 10th, 1937.

Fourteenth. No organic right of complainants is violated by Section 11 of the Act of June 10th, 1937.

Fifteenth. No organic right of complainants is violated by Section 12 of the Act of June 10th, 1937.

Sixteenth. The allegations of the second supplemental bill of complaint constitute a departure in pleading.

Seventeenth. The powers and duties of these defendants as an agency of the sovereign state are prescribed and limited by Statute and cannot be exceeded, and the power of these defendants as an agency of the Everglades Drainage District are prescribed and limited by Statute and cannot be exceeded.

Eighteenth. Tax certificates give the right to convey the lands only for the purpose of enforcing the payment of delinquent taxes and unless the certificate is redeemed as provided by law.

Nineteenth. The Trustees do not own the lands except through the tax sale and as agents of the Board of Commissioners of Everglades Drainage District and do not purport to convey it except as a means of enforcing the right of the Board of Commissioners of Everglades

Drainage District to collect taxes duly levied on the lands in the district.

Twentieth. No statutory or constitutional right of bondholders is violated by failure of the Trustees to pay taxes on lands "bid off" for them by Tax Collectors.

Twenty-first. No obligation of the State to drain the particular lands of the Everglades Drainage District was recognized by the enactment of Chapter 610, Laws of Florida, approved January 6, 1855.

Twenty-second. By the enactment of Chapter 610, approved January 6, 1855, the general assembly recognized its obligation under the Constitution, as it then existed, to assist in the construction of a system of transportation in the State.

Twenty-third. Bonds issued by the Everglades Drainage District are obligations of such district and are not obligations of the State of Florida.

Twenty-fourth. In view of the limitations contained in Section 6 of Article IX of the State Constitution neither the State of Florida nor the Trustees of the Internal Improvement Fund of the State of Florida, a State agency, can legally pay or obligate to pay bonds of the Everglades Drainage District.

Twenty-fifth. The laws authorizing the issuance of Everglades Drainage District bonds cannot and do not pledge or loan the credit of the State to the Everglades Drainage District or for the payment of Everglades Drainage District bonds.

Twenty-sixth. Under Section 10 of Article IX of the State Constitution neither the State nor the Trustees of the Internal Improvement Fund of the State of Florida, a State agency, can pledge or loan its credit to any holders of Everglades Drainage District bonds.

[fol. 271] Twenty-seventh. It does not appear from the allegations of the original and supplemental and amended Bills of Complaint that Spitzer-Rorick and Company kept or performed their part of the alleged agreement to purchase Five Million Seven Hundred Thousand Dollars (\$5,700,000.00) refunding bonds and One Million Two Hun-

dred and Fifty Thousand Dollars (\$1,250,000.00) new bonds of the Everglades Drainage District in consideration of which it is alleged that the Trustees agreed to pay taxes on lands "bid off" for them.

Twenty-eighth. By Chapter 5577, Acts of 1905, Chapter 5709, Acts of 1907, and Chapter 6456, Acts of 1913, and subsequent Acts relating to the same subject, it was the legislative intent and purpose that the expense of draining and reclaiming swamp and overflowed lands should be borne by the lands in the particular district sought to be drained or reclaimed.

Twenty-ninth. Only the faith, credit and resources of the Everglades Drainage District were pledged for the payment of its bonded indebtedness.

Thirtieth. By Section 13 of Chapter 6456, Laws of Florida Acts of 1913, now Section 1542, Compiled General Laws of Florida, 1927, only voluntary bidders are required to make immediate payment on lands "struck off" to them by the Tax Collectors, and there is no requirement in said Section or any other law for payment of taxes by the Trustees immediately or at any time on lands "bid off" for them by the Tax Collectors until the Everglades Drainage District tax certificates on said lands issued to the Trustees are redeemed or sold, as provided by law.

Thirty-first. The original and supplemental Bills of Complaint, as amended, in effect seek to make bonds of the Everglades Drainage District State obligations contrary to Section 6 of Article IX of the State Constitution.

Thirty-second. By Section 8 of Chapter 6456, Laws of Florida, Acts of 1913, as amended, now Section 1537, Com-[fol. 272] piled General Laws of Florida, 1927, it is provided: "Except as herein specifically provided, all laws relating to State and County taxes in this State are hereby made applicable to the Everglades Drainage District." And this applies to the method of carrying on the assessment roll lands "bid off" for the Trustees without extending the taxes.

Thirty-third. It does not appear that the alleged proposal of Spitzer-Rorick and Company to purchase bonds of the Board of Commissioners of Everglades Drainage District, as set forth in paragraph 13 of the original Bill, was con-

summed or that Spitzer-Rorick and Company kept and performed their part of such alleged agreement.

Thirty-fourth. It is not alleged that the bonds of the complainants were bought on the strength of the alleged agreement of the Trustees to pay the taxes on lands "bid off" for them.

Thirty-fifth. The Trustees are not required by law to pay the taxes on lands "bid off" for them by the Tax Collectors until such taxes are paid by redemption or sale of the lands.

Thirty-sixth. The Trustees, in the absence of statute, are without authority to bid themselves to pay taxes on lands "bid off" for them.

Thirty-seventh. Section 3 of Chapter 7305, Laws of Florida, Acts of 1917, now Section 1541, Compiled General Laws of Florida, 1927, did not obligate the Trustees to pay the drainage taxes on lands "bid off" for them by the Tax Collectors or subsequent taxes thereon.

Thirty-eighth. Under the provisions of Section 3 of Chapter 7305, Laws of Florida, Acts of 1917, now Section 1541, Compiled General Laws of Florida, 1927, lands "bid off" for the Trustees shall be held in like manner and with like effect as lands sold to the State for non-payment of State and County taxes are held by the State.

Thirty-ninth. By Section 16 of Chapter 6456, Laws of [fol. 273] Florida, Acts of 1913, as amended, now Section 1546, Compiled General Laws of Florida, 1927, the proceeds of the sale and redemption of lands "bid off" for the Trustees are held in trust by them for the Board of Commissioners of Everglades Drainage District to be applied to the payment of the drainage taxes for which assessments were made, and to the obligations and expenses incident to the administration of said law as agents of said Board.

Wherefore these defendants pray, and each of them prays that said action and said bill of complaint, supplemental bill of complaint, and second supplemental bill of complaint, and amendments thereto, be dismissed, and that they have and recover judgment for their costs incurred herein.

Fred H. Kent, Solicitor for above named Defendants.

Francis D. Wheeler, Kent, Kassewitz, Wheeler & Crenshaw, of Counsel.

[fol. 274] IN UNITED STATES DISTRICT COURT

MOTION^o FOR INTERLOCUTORY INJUNCTION, REINSTATEMENT OF INJUNCTIONAL ORDER OF SEPTEMBER 6, 1932, AND FOR THE CONVENING OF A COURT OF THREE JUDGES TO HEAR SUCH MOTION—Filed January 19, 1938

Now come the complainants and show to the Court that the above entitled cause is a cause to restrain the action of officials of the State of Florida in the enforcement and execution of certain statutes specifically mentioned in the bill of complaint and the supplemental bill of complaint, as amended, and the second supplemental bill of complaint attacking the constitutionality of such statutes as impairing the obligation of contracts and otherwise being in violation of the rights of holders of bonds of Everglades Drainage District, and the complainants now file this their motion and application for the issuance of an interlocutory injunction or injunctions as prayed in and by the original bill of complaint and supplemental bill of complaint, as amended, and by the second supplemental bill of complaint and on the grounds set forth in such bill of complaint and supplemental bills of complaint, and that the injunctonal order of September 6, 1932 made by the court composed of three judges may be reinstated.

The complainants further make this their application to this court for a hearing in this cause on their application for an interlocutory injunction or injunctions prayed in their bill and supplemental bills as required by Section 266 of the Judicial Code, as amended, being Section 380 of Title 28 United States Code, and that the United States District Judge for the Northern District of Florida shall immediately call to his assistance to hear and determine this application two other Judges as required by said Section 380.

This 18 day of January, 1938.

Wm. Roberts, Watson & Pasco & Brown, Solicitors
for Complainants.

[fol. 275] IN UNITED STATES DISTRICT COURT

ORDER CONVENING A COURT OF THREE JUDGES TO HEAR
MOTION FOR INTERLOCUTORY INJUNCTION AND FOR REIN-
STATEMENT OF THE INJUNCTIONAL ORDER OF SEPTEMBER 6,
1932—Filed January 19, 1938

The complainants having presented their application to the court for the issuance of an interlocutory injunction or injunctions as prayed for in and by the bill of complaint and the supplemental bill of complaint, as amended, and the second supplemental bill of complaint herein, and for reinstatement of the injunctional order of September 6, 1932 made by the court composed of three judges, and for hearing thereon before three judges as required by Section 266 of the Judicial Code, as amended, being Section 380, of Title 28 of the United States Code;

It is Ordered that the defendants appear before the Judge of the District Court of the United States for the Northern District of Florida, and a Judge of the Circuit Court of the United States, and another District Judge of the United States, sitting to hear said application on the 3rd day of March, 1938, at ten o'clock in the forenoon, at the court room, Circuit Court of Appeals, New Orleans, and then and there show cause, if any they have, why the interlocutory injunction or injunctions prayed for in the bill of complaint and supplemental bill of complaint, as amended, and the second supplemental bill of complaint should not issue, and why the injunctional order of September 6, 1932 should not be reinstated.

It is Further Ordered that not less than five (5) days notice of the hearing above provided for shall be given to the Governor and to the Attorney General of the State of [fol. 276] Florida, and to the other defendants in this cause, and that service of notice of the hearing on defendants other than the Governor and Attorney General of the State of Florida, shall be sufficient if made upon any of the solicitors of record for said other defendants, and that the hearing of this cause be had and proceeded with in accordance with said Section 266 of the Judicial Code of the United States, as amended, being Section 380 of Title 28 of the United States Code.

Dated at Gainesville, Florida, in the Northern District of Florida, this 18 day of January, 1938.

A. V. Long, Judge of the United States District Court for the Northern District of Florida.

IN UNITED STATES DISTRICT COURT

ORDER CALLING ADDITIONAL JUDGES—Filed January 18, 1938

The above styled and entitled cause in which application for interlocutory injunction is made as prayed for in the bill of complaint and supplemental bill of complaint, as amended, and in the second supplemental bill of complaint, and hearing is prayed before a court composed of three Judges pursuant to Section 266 of the Judicial Code, as amended;

It is Ordered that there is hereby called to the assistance of the undersigned District Judge to hear and determine the said application, Honorable Rufus E. Foster, United States Circuit Judge, and Honorable Louie W. Strum, United States District Judge.

Dated at Gainesville, Florida, in the Northern District of Florida, this 18 day of January, 1938.

A. V. Long, United States District Judge for the Northern District of Florida.

[fol. 277] IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING—Filed March 5, 1938

To Honorable Fred P. Cone, as Governor of the State of Florida; Honorable Cary D. Landis, as Attorney General of the State of Florida and Attorney for the Defendants Trustees of the Internal Improvement Fund of the State of Florida; and Honorable Fred H. Kent, as Attorney for All Other Defendants in the Above Styled Cause:

Please take notice that on the 3d day of March, 1938 at ten o'clock in the forenoon in the Courtroom of the Circuit Court of Appeals at New Orleans, Louisiana, we will bring on for hearing before a District Court of three Judges convened pursuant to Section 266 of the Judicial Code, as amended, the application of the plaintiffs for the issuance

of an interlocutory injunction or injunctions as prayed in and by the original bill of complaint and supplement bill of complaint, as amended, and the second supplemental bill of complaint, and for reinstatement of the injunctive orders of September 6, 1932 made by a three judge court in said cause; and will at the same time and place, immediately after the presentation of said application, bring on for hearing the motions to dismiss interposed by the defendants after the filing of the second supplemental bill of complaint.

This cause involves an attack by bondholders of Everglades Drainage District on the constitutional validity, as against their rights, of Chapter 13,633, Laws of Florida, Acts of 1929, Chapter 14,717, Laws of Florida, Acts of 1931, and Chapter 17,902, Laws of Florida, Acts of 1937.

This February 9, 1938.

William Roberts, Watson & Pasco & Brown, W. H.
Watson, Solicitors for Plaintiffs.

[fol. 278] STATE OF FLORIDA,
County of Escambia:

W. H. Watson being duly sworn on oath says that he is one of the solicitors for the plaintiffs in the foregoing notice; that on the 9th day of February, 1938 he enclosed copies of the foregoing notice in envelopes addressed respectively to Honorable Fred P. Cone, Governor of the State of Florida, Tallahassee, Florida; Honorable Cary D. Landis, Attorney General of the State of Florida, Tallahassee, Florida; and Honorable Fred H. Kent, Florida National Bank Building, Jacksonville, Florida, the post office addresses of said several persons, and after sealing said envelopes and affixing thereto sufficient uncanceled postage stamps fully to prepay postage thereon, he mailed the said envelopes and their contents, sealed and stamped as aforesaid, by depositing the same in a mail chute in the American National Bank Building at Pensacola, Florida provided by the United States for receiving matter to be transported through the mails.

W. H. Watson.

Sworn to and subscribed before me this 9th day of
February, 1938. C. J. Brown, Jr., Notary Public.

[fol. 279] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF H. C. RORICK—Filed March 5, 1938

Before the subscriber personally came H. C. Rorick, who being by me first duly sworn on oath says that he is one of the plaintiffs in the above styled and entitled cause which was before the Court on the original and supplemental bill of complaint and their amendments, in Rorick, et al. v. Board of Commissioners of Everglades Drainage District, et al., reported in 57 Fed. (2) 1048, et seq.; that he has read the said original and supplemental bill as they are amended; and the second supplemental bill of complaint filed in said cause, and that the matters and things therein alleged are true.

H. C. Rorick.

Sworn to and subscribed before me this 10th day of January, 1938. D. W. Drennan, Notary Public.
(Seal.)

AFFIDAVIT OF WALTER H. LIPPINCOTT—Filed January 16, 1932

Before the subscriber personally came Walter H. Lippincott, who being by me first duly sworn, on oath says that he is one of the complainants in the above styled and entitled cause, and that the matters and things alleged in the bill of complaint and amendments thereto, and the supplemental bill of complaint, as to the knowledge of the complainants are true; and that the matters and things therein alleged on information and belief the affiant believes to be true.

Walter H. Lippincott.

Sworn to and subscribed before me this 23rd day of November, 1931. John Marsden, Notary Public.
(Seal.)

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF F. C. ELLIOT—Filed March 5, 1938

I, F. C. Elliot, Secretary of the Trustees of the Internal Improvement Fund of the State of Florida, being first duly

sworn, do depose and say that I am Secretary of the Trustees of the Internal Improvement Fund of the State of Florida, and have been such Secretary during all of the year 1931 and subsequent years to date; that the records of this office show, and I know of my own personal knowledge, that during the month of September, 1931, a complete settlement was made between the Trustees of the Internal Improvement Fund and the Board of Commissioners of Everglades Drainage District under the provisions of Chapter 14717, Laws of Florida, Acts of 1931, including the transfer to the Board of Commissioners of Everglades Drainage District of all Everglades Drainage District tax certificates bid in to and then held by the said Trustees of the Internal Improvement Fund, together with all records of the Board of Commissioners of Everglades Drainage District then held by the said Trustees of the Internal Improvement Fund.

F. C. Elliot.

Sworn to and subscribed before me this 26th day of February, 1938. M. O. Barco, Notary Public, State of Florida at Large. (Seal.)

[fol. 281] IN UNITED STATES DISTRICT COURT IN AND FOR THE
NORTHERN DISTRICT OF FLORIDA, PENSACOLA DIVISION

IN EQUITY

H. C. ROBICK et al., Plaintiffs,

vs.

BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT,
etc., et al., Defendants

William Roberts of New York, Watson & Pasco & Brown of Pensacola, Florida, for plaintiffs.

Fred H. Kent of Jacksonville, Florida, for Defendant Board of Commissioners of Everglades Drainage District.

George Couper Gibbs, Attorney General, Marvin C. McIntosh, Assistant Attorney General, W. P. Allen, Assistant Attorney General, H. E. Carter, Assistant Attorney General, Tallahassee, Florida, for defendants Trustees Internal Improvement Fund.

Before Foster, Circuit Judge, and Strum and Long, District Judges

OPINION AND JUDGMENT—August 2, 1938

Per CURIAM:

This is the second appearance of this cause before a three judge statutory court. The cause was presented first to Honorable Nathan P. Bryan, United States Circuit Judge, and District Judges Sheppard and Strum. An application was made for interlocutory injunction which was granted by the three judge court upon the giving of bond. The plaintiffs having failed to give the bond no interlocutory injunction was issued. The opinion in the case was written by Judge Strum, 57 Fed. (2d) 1048. This opinion was concurred in by the United States District Judge Sheppard, United States Circuit Judge Bryan dissenting in part.

[fol. 282] It appears that all of the questions presented at this time were passed on in the former hearing, and particularly those questions reaching to the constitutionality of Acts of the Legislature of Florida enacted subsequent to the issuance and purchase of the bonds, the Court holding that obligation of contract is impaired when its value is diminished by subsequent legislation; that legislation providing for the issuance of the bonds, for the creation of sinking fund for the retirement of bonds, for the payment of interest, became and were part of the bond contract; that statutes fixing new drainage district acreage taxes and creating administration funds from the proceeds were inoperative against holders of outstanding district bonds so far as such diversion reduced tax proceeds available for payment of bond interest and principal. In fact, the Court held in substance that all subsequent legislation that impaired the bond contract was unconstitutional and void. This opinion, so far as the Federal Statutory Court was concerned, settled the main question now presented to this Court, that the Trustees of the Internal Improvement Fund were not by subsequent legislation relieved of their obligation to pay subsequent special drainage taxes on lands in Everglades Drainage District bid off for said Trustees for nonpayment of district drainage taxes.

The opinion in this case was written April 13th, 1932. Subsequent to that date supplemental bills have been filed complaining of the several Acts of the Legislature undertak-

ing to effect the bond issues and the manner provided for their payment, and the case is now before this Court upon an application to reinstate the former interlocutory order and for the granting of an interlocutory injunction at this time, and upon motions of defendants to dismiss the bill and supplemental bills.

The same questions presented here have been passed on by the Supreme Court of the State of Florida, particularly the question of whether or not the Internal Improvement Fund Trustees should pay for tax certificates issued on privately owned land within Everglades Drainage District when such lands are bid off to Trustees.

Circuit Judge Bryan dissenting in part from the majority opinion, 57 Fed. (2d) 1048, quoted by Supreme Court of Florida, State ex rel. Board of Commissioners of Everglades Drainage District vs. Sholtz, 150 So. 878,

"When land in the drainage district has been bid off for the trustees for the nonpayment of drainage taxes, the title vests in the trustees, but they hold it subject to the owner's right of redemption which continues until the land is sold. The sale must be for at least as much as accrued taxes, and, in the event of such a sale, but not otherwise, the trustees are required to pay the delinquent drainage taxes. If they were purchasers in their own right, their obligation to pay would naturally arise as of the date of the tax sale, and would not be conditioned on a future sale. The provision of Section 1, Chapter 9119, Laws of 1923, subjecting land within the drainage district held by the trustees to drainage taxes, refers to land owned by the trustees in their own right, and not to land held in trust under tax certificates. If it had been the intention of the Legislature to bind the trustees as purchasers of land upon which drainage taxes had not been paid, there should and doubtless would have been a plain and unequivocal provision to that effect. It is not to be inferred that the Legislature intended to impose a burden as great as is here contended for merely because it adopted existing provisions of law applicable to the holding and disposition of lands by the state upon default in the payment of ordinary taxes."

The Supreme Court of Florida, in passing upon this particular question, was unable to agree with the majority opinion in this case of *Rorick v. The Board of Commissioners of Everglades Drainage District*, 57 Fed. (2d), but

adopted the dissenting opinion of United States Circuit Judge Bryan, holding that Internal Improvement Fund Trustees need not pay taxes on privately owned land within Everglades Drainage District when such lands are bid off to Trustees, until lands have been sold or redeemed, but Trustees hold certificated land and certificates in trust for Commissioners of drainage district.

From an examination of the case of *Martin v. Dade Muck Land Company*, 95 Fla. 550, 116 So. 449; *State ex rel. Sherrill v. Milam et al.*, 113 Fla. 491, 153 So. 100; *State ex rel. Board of Commissioners of Everglades Drainage District v. Sholtz*, 112 Fla. —, 150 So. 878; [fol. 284] *Everglades Drainage District et al. v. Florida Ranch and Dairy Corporation*, 74 Fed. (2d) 914, it appears that the Supreme Court of Florida has passed upon the questions presented to this Court adverse to plaintiff, and notwithstanding the decision in the *Rorick* case, 57 Fed. (2d) 1048, this Court is bound by the construction placed upon these statutes by the highest Court of the state. *Erie Railroad Company v. Harry J. Tompkins*, U. S. Supreme Court.

The motion to reinstate the former interlocutory order is denied.

The motion for interlocutory injunction now sought is denied, and the bill and supplemental bills dismissed.

This the 2 day of August, A. D., 1938.

Rufus E. Foster, United States Circuit Judge. Louie W. Strum, United States District Judge. A. V. Long, United States District Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 285] PETITION FOR REHEARING—Filed August 19, 1938

Now come the plaintiffs, H. C. Rorick, Joseph R. Grundy, and J. R. Easton, and file and present this their petition for a rehearing of this cause in which by the judgment and order of August 2, 1938, the bill of complaint and the supplemental bills were dismissed and show to the Court as reasons why a rehearing should be had the following:

(1) That in the opinion and judgment of August 2, 1938, denying application to reinstate the former interlocutory order, denying the motion for interlocutory injunction, and dismissing the bill and supplemental bills the Court, in practical effect, and erroneously, as the plaintiffs believe, treated the cause as if the only real question presented was the liability of the Trustees of the Internal Improvement Fund to take and pay for Everglades tax certificates and pay taxes on the certificated lands.

In reality three sets of questions were raised by the bills [fol. 286] and presented on the motions to dismiss:

(a) Whether the Trustees of the Internal Improvement Fund of the State of Florida by the legislation under which bonds of Everglades Drainage District were issued were obligated to pay cash for tax certificates bid off to them and to pay taxes on the lands so bid off as part of the obligation of the bond contract, and whether such Trustees took certificated lands in their own right or as trustees for the Board of Commissioners of Everglades Drainage District;

(b) Whether the provisions of Chapter 13,633, Acts of 1929, Chapter 14,717, Acts of 1931, and Chapter 17,902, Acts of 1937 (the last mentioned Act being in part amendatory of certain sections of Chapter 14,717) by reducing the acreage taxes pledged for the payment of bonds by Section 1560, C. G. L. below the rates fixed by Chapter 9119, Acts of 1923 (the last Act under which original bonds were issued) and the rates fixed by Chapter 10,026, Acts of 1925, which last act was in force when refunding bonds were issued, so as to reduce the aggregate acreage taxes from \$2,250,000.00 per year to \$595,000.00 per year, impaired the obligation of the contract of such bonds; and

(c) Whether Chapter 14,717, Acts of 1931, as amended by Chapter 17,902, Acts of 1937, by splitting the acreage taxes and diverting and appropriating the proceeds of acreage taxes to other purposes than the payment of bonds and interest in default since 1931, and by making bonds and interest-coupons, instead of cash, receivable in the redemption of tax sale certificates, and by authorizing the Board of Commissioners of Everglades Drainage District to cancel without payment certain acreage tax certificates, impaired the obligation of the bond contract.

The court has now denied the relief prayed and dismissed the bills, not for defect of pleading or want of proper parties but, because the Court came to the conclusion that the "main question now presented to this Court" was the obligation of the Trustees of the Internal Improvement Fund to pay sub-[fol. 287] sequent special drainage taxes on lands bid off to them for nonpayment of drainage taxes and from an examination of certain cases mentioned

"it appears that the Supreme Court of Florida has passed upon the questions presented to this Court adverse to plaintiffs,"

and that under the rule laid down in *Erie v. Tompkins* the Court finds itself concluded by such state decisions. Thus the decision and judgment dismissing the bills rests upon the assumption that the Florida court has ruled all questions against the plaintiffs. If the assumption is erroneous as to any one of the set of questions presented, then it is respectfully submitted the order of dismissal should be vacated on rehearing.

(2) If it be true that the Florida Supreme Court has decided any of the questions adversely to the plaintiffs, it is respectfully submitted that it is not true that such decisions are binding on this Court by reason of the *Erie-Tompkins* decision for that the questions presented in the case at bar are questions arising under the Federal Constitution protecting the obligation of contracts against impairment by state legislation, on which questions state decisions are not binding upon or followed by Federal Courts unless the latter are convinced of their correctness or are unable to say that they are clearly wrong. The *Erie-Tompkins* case expressly excepted from the rule there announced matters governed by the Federal Constitution when the Court said:

"Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the state."

The Supreme Court of the United States has held that while the Federal Courts give weight to the construction of a statute by the state court, they are not bound by state decisions as to the existence and terms of the contract, the obligations of which are asserted to be impaired, but will

lean toward agreement and will accept such decisions unless manifestly wrong.

Dodge v. Board of Education, 302 U. S. 74.

[fol. 288] Hale v. Board of Assessment, 302 U. S. 95;

Phelps v. Board of Education, 300 U. S. 319.

And in determining the meaning and extent of the contract and whether the obligation of it had been impaired, the Supreme Court has held that it must reach its conclusion independently of the judgment of the state court construing the legislation, though the latter judgment is persuasive as to the meaning of the statute.

Larson v. South Dakota, 278 U. S. 429, 433;

Moore-Mansfield Construction Co. v. Electrical Installation Co., 234 U. S. 619, 625.

It is settled law that a statute appropriating certain taxes for the payment of bonds creates a contract with the bondholders which is impaired by a subsequent diversion of the taxes for other purposes.

Louisiana v. Jumel, 107 U. S. 711; 105 U. S. 733.

Diversion is precisely one of the features complained of under the questions involved in this case and, as the plaintiffs conceive, this Court is controlled by the decisions of the Supreme Court that such diversion impairs the obligation of the contract of the bonds for which the pledge was made.

(3) And, it is respectfully submitted, that of the cases mentioned in the opinion and order of this Court of August 2, 1938, only the case of State ex rel Board of Commissioners v. Sholtz, 112 Fla. 756, 150 So. 878, can be said to have decided any of the questions here involved adversely to the plaintiffs. That case, to which no bondholder was a party, did decide that the Trustees of the Internal Improvement Fund need not pay for tax certificates bid off to them on privately owned lands until such lands had been sold or redeemed, and that the Trustees hold certificates and certified lands in trust for the Board of Commissioners of Everglades Drainage District. That decision is controlling here if, and only if, the construction there given does not impair the obligation of the bond contract. It did not follow Judge Bryan's dissent in 57 Federal (2) 1048, insofar as Judge Bryan said:

"The Trustees, in my opinion, hold the certificated lands in trust for bondholders and other creditors of the drainage district."

(4) It is respectfully submitted that *Knott v. Dade Muck Land Co.*, 95 Fla. 530, 116 So. 449, dealt not at all with the rights of bondholders here involved and decided nothing in respect of the validity of the reduction of acreage taxes, or the diversion to other purposes of proceeds of acreage taxes pledged for the payment of bonds and interest by Section 1560, C. G. L., nor with the validity of any statutory provision for the use of bonds and coupons at par in the redemption of tax certificates, nor the validity of any statutory provision for the cancellation of certain tax certificates without any payment, all of which are here involved. That case, it is respectfully submitted, was one to enjoin the sale of bonds proposed to be issued under Chapter 12,016 of the Acts of 1927, and the levy of taxes under that Chapter. The suit was brought by landowners and not by bondholders. It was contended that other land benefited should have been brought into the district there provided for, that the lands of complainants were not benefited by the proposed improvements, and that the attempted levy of ad valorem drainage taxes on lands for benefits was void. Also it was contended that the provisions for payment of ad valorem drainage taxes by the Trustees of the Internal Improvement Fund and for their bidding in lands at tax sales and using such funds therefor were void. It was held that the Act with certain minor exceptions, was valid as against the attacks made, and that the Trustees could validly be required to use funds received from the use or sales [fol. 290] of swamp and overflowed lands held by them under the trusts declared by law in the payment of the ad valorem drainage taxes and in buying at tax sales. When, however, that legislation was attacked in a Federal Court by holders of bonds issued in conformity to Sections 1160 to 1178 of the Revised General Statutes, being Chapter 6456, Acts of 1913, and its amendments, it was held that Chapter 12,016 was void as to such bondholders because it gave the bonds proposed to be issued under the last mentioned Act superior rights in ad valorem taxes and sinking

fund in violation of the provisions of Section 1178, R. G. S. requiring new bonds and old bonds to be of equal dignity.

See

Rorick, et al. v. Board of Commissioners, 27 Fed. (2) 277.

No bonds were ever issued under Chapter 12,016 and it was repealed. Thereafter the Act of 1929, the Act of 1931, and the Act of 1937, all now under attack, were enacted.

(5) It is further respectfully submitted that the case of State ex rel. Sherrill, et al. v. Milam, et al., 113 Fla. 491, 153 So. 100, did not involve any questions as to the Trustees of the Internal Improvement Fund and did not decide the other questions here presented adversely to these plaintiffs, but did decide that both Chapter 13,711, Acts of 1929, and Chapter 14,717, Acts of 1931, were void as against the holders of refunding bonds issued under Chapter 10,027, Acts of 1925, for the reasons urged in this litigation. It further decided that the applicable acreage tax rate to be levied for the payment of bonds was that fixed by Chapter 10,026, Acts of 1925, because that Act was in force when the refunding bonds held by relators were issued and sold. Since by Section 1553, C. G. L. additional bonds could only be issued when the authority therefor was

"accompanied by the levy and imposition of additional taxes and assessments sufficient to meet the payment of the bonds and interest thereon as the same shall become due and such additional bonds shall constitute an obligation of equal dignity with the bonds herein authorized; and equally with the bonds herein authorized may be entitled to payment from all drainage taxes then or thereafter imposed [fol. 291] upon the lands within said District without preference to any bonds or series of bonds over any other bonds or series of bonds,"

and since each additional authorization was accompanied by an increase of the acreage taxes originally fixed in Chapter 6456, Acts of 1913, it inescapably follows that the tax rate fixed by Chapter 9119, Acts of 1923, the last Act under which any original bonds were issued, or the rates fixed by Chapter 10,026, Acts of 1925 (Now Section 1554, C. G. L.) refunding bonds under that Act

"shall constitute an obligation of equal dignity with any and all other bonds heretofore, or that hereafter may be, issued against and by said district,"

and since the Supreme Court in the Sherrill-Milam case determined that the holders of refunding bonds were entitled as a part of the obligation of their bond contract to have taxes assessed at the rates fixed by Chapter 10,026, Acts of 1925, it likewise follows that the tax rates fixed by that Act are the tax rates for all bonds of Everglades Drainage District, for the rates fixed by that Act were the rates in force when the last of the bonds of equal dignity were issued. This was recognized by the Circuit Court of Appeals in *Everglades Drainage District v. Florida Ranch & Dairy Corporation*, (C. C. A. 5) 74 Fed. (2) 914, 917, when in speaking of the Sherrill-Milam case it said:

"The relators in that case were refunding bondholders, but the decision would doubtless have been the same if they had been original bondholders, since only one levy is provided and it *applies to all bondholders alike*."

This must necessarily be so. Original bondholders could not complain of the increase of taxes by the 1925 Act, as Judge Bryan points out. It was within the power of the Legislature to increase levies, but not to diminish as against the rights of bondholders. Section 1554, C. G. L. gave the bondholders a vested right to payment from drainage taxes "*then or thereafter imposed*." The 1925 Act increasing taxes amended and superseded Section 1164, R. G. S., which was Chapter 9119 of the Acts of 1923, and was the only valid act in force when the refunding bonds of 1925 were issued. The refunding bonds took that rate as the Sherrill-Milam case decides, and since they were of equal [fol. 292] dignity with all other bonds, and all other bonds of equal dignity with them, and the appropriation and pledge by Section 1183, R. G. S., Section 1560, C. G. L. of the proceeds of these taxes were for the payment of all bonds, the conclusion would seem to be inescapable that from the time refunding bonds were issued all bonds became entitled to the 1925 rates, and any reduction of those rates, as by the 1937 Act, would impair the obligation of all bonds. Of course, the Court should notice that the 1937 Act was passed subsequently to any of the Florida cases.

In holding that on questions of reduction of taxes, diverting proceeds of acreage taxes applicable to and pledged for the payment of bonds, the use of bonds and coupons at par, instead of cash, in redeeming tax certificates, and the authorization of cancellation of tax certificates without any payment, the Supreme Court of Florida had held adversely to the plaintiffs, it is assumed that the Court had in mind the Sherrill-Milam case. The 1937 Act, to say nothing of the Acts of 1929 and 1931, did all these things, and reduced taxes far below the rates in either Chapter 9119, Acts of 1923, or Chapter 10,026, Acts of 1925. If that case did not decide those questions adversely to the contention of the plaintiffs, then the decree of dismissal is erroneous, should be set aside, and a rehearing had even, if in the exercise of a sound discretion, the Court should deny an injunction pendente lite.

It is respectfully shown that the Sherrill-Milam case was a suit by the holders of refunding bonds to compel the levy of acreage taxes at the 1925 rate, notwithstanding the legislation of 1929 and 1931 reducing acreage taxes and diverting proceeds. The Court stated that two questions were presented (153 So. 107, text):

(a) Whether relators as holders of negotiable refunding bonds had the right under Chapter 10,027, Acts of 1925, to compel the Board of Commissioners to prepare tax lists for 1932, and send them down to the tax assessors, and to require the tax assessors to enter such lists on the assessment rolls of their county; and,

(b) What was the acreage tax rate applicable in a mandamus proceeding by holders of refunding bonds issued under the 1925 Act.

The consideration of the second question, as the court found, involved a determination of the validity of the 1929 Act and the 1931 Act as impairing the obligation of the bond contract.

The court affirmed the right of the holders of the refunding bonds, as a part of the obligation of their bond contract, to compel the Board of Commissioners to prepare the tax lists and the tax assessors to enter them upon their assessment rolls, and determined that within the obligation of the contract of the bonds the applicable tax rate was that fixed by Chapter 10,026, Acts of 1925, instead of the tax rate fixed

by Chapter 9119, Acts of 1923, the last Act under which original bonds were issued. The Florida Court differed, we think, from the decision of this Court in 57 Federal (2) 1048 in these particulars only:

(a) It held that the issuance of refunding bonds under Chapter 10,027, Acts of 1925, did bring into operation the increase in tax rates under Chapter 10,026 of the Acts of 1925 (text 114, 115);

(b) That while refunding bonds did not increase the indebtedness of the District, they "*did* create new and different contracts or obligations *evidencing* such indebtedness," (text 115) so that the increased acreage tax under Chapter 10,026 applied to them (text 116, 117, and 118); and

(c) That the holders of the refunding bonds did have a vested right in the increased taxes under Chapter 10,026, and the fact that Chapter 10,027 was not an amendment of Section 19 of Chapter 6456, the original Everglades Act, [fol. 294] but was an amendment of Section 20 of that Act, did not prevent the existence of such vested right and that the applicable tax rate was, therefore, that fixed by Chapter 10,026 and not the less rate fixed by Chapter 9119 of 1923 (116, 117, and 118).

But the Florida Court expressly agreed with the three judge case that a reduction of acreage taxes by the Act of 1931 impaired the obligation of the bond contract, saying:

"We concur in the holding of the three Federal Judges, in the case of *Rorick v. Board of Commissioners of Everglades Drainage District*, that the acreage tax provided in Chapter 14,717 is void and ineffective in so far as it affects the contract rights of the relators as holders of bonds issued and acquired by them prior to the enactment of the law. And we further hold that the provisions of Chapter 14,717, Laws of Florida, *supra*, providing for the levy, collection, and disbursement of the acreage tax for drainage purposes impair the obligation of the contract of the relators as bondholders, in that they fix an acreage tax less than that provided when the bonds held by the relators were issued." (Text 113.)

The court went on to hold that the rate applicable to refunding bonds was not the less rate applicable at the date

of the issue of original bonds which were refunded. (114)
Going on the court said:

"The Legislature could not in violation of the contract rights of these relators acquired in 1925, so change the amount of the tax prevailing when the bonds were issued, as to diminish or destroy the source of revenue to pay the bonds for the purpose of fixing the tax according to the benefits received. Besides it is not for the Board of Commissioners of Everglades Drainage District to raise this question, even if it can be raised as against the relators as holders of bonds issued July 1, 1925." (Text 119.)

So it is that the Sherrill-Milam case held the Acts of 1929 and 1931 void in the very particulars attacked in the case at bar, and announced the principles in so doing which conclusively show that the 1937 Act is void, though not before the Florida Court in that case, and that that Court would have held it to be void had it been before them. It is submitted that it will not and cannot be disputed that the tax rates fixed by the 1937 Act here under attack are less [fol. 295] than the rates fixed by any of the Acts under which any of the bonds of Everglades Drainage District now outstanding were issued. The Sherrill-Milam case differed not at all in the principles determined from the case differed not at all in the principles determined from the case in 57 Federal (2) 1048, save in holding that refunding bonds were new contracts taking the higher tax rate in force when they were issued and not the lower tax rate in force at the date of the issuance of the bonds refunded or of the last bonds issued when Chapter 9119, Acts of 1923 was in force.

The Florida Court there held definitely, as did the three judges, that Chapter 6456 as amended created an irrepealable contract (108) and that the refunding bonds had the same standing as the bonds issued under any of the provisions of the law as codified in the Revised General Statutes (109) being of equal dignity therewith (109), and that the appropriation of the acreage taxes by Section 1183, Revised General Statutes, Section 1560, C. G. L. was a part of the irrepealable contract (112); and it definitely cited with approval the case in 57 Federal (2) 1048 as sustaining the proposition:

"that subsequent acts of the Legislature cannot annul, nor diminish, retard or lessen, the efficacy of prior laws enter-

ing into and forming a part of the contracts with bondholders." (113.)

It is, therefore, respectfully submitted that the court here in its opinion and judgment of August 2, 1938 fell into error in treating the Sherrill-Milam case or any other of the cases in the Supreme Court of Florida as deciding adversely to the plaintiffs the questions here involved other than the obligation of the Trustees of the Internal Improvement Fund to take and pay for tax certificates and pay taxes on certificated lands.

(6) It is further respectfully submitted that the case of Everglades Drainage District v. Florida Ranch & Dairy [fol. 296] Corporation, (C. C. A. 5) 74 Fed. (2) 914 did not involve and did not decide adversely to the contentions of these plaintiffs the questions here involved in the original and supplemental bills on Chapters 13,711, Acts of 1929, 14,717, Acts of 1931, and 17,902, Acts of 1937 as impairing the obligations of Everglades bond contracts. The attack there was by a bondholder and landowner on Chapter 10,026, Acts of 1925, and sought to enjoin the Board from sending down tax lists except in accordance with Chapter 9119, Acts of 1923, the Act in force at the time of the issuance of that plaintiff's bonds, the contention being made that the change in rates and zones by the 1925 Act impaired the obligations of that plaintiff's contract as a bondholder. The case was not one, as here, where the Trustees of the Internal Improvement Fund are parties, but it was contended that the case was one in the lower court for three judges under 28 U. S. C., Section 380. The court held as an examination of its opinion shows:

(1) That that case was not one for a three judge court.

(2) That all outstanding bonds are of equal dignity, the court saying:

"It is only necessary to say here that the Legislature levied the drainage taxes; * * * that all outstanding bonds are of *equal dignity*; and that whenever additional bonds are issued additional taxes to take care of them are required to be levied." (Text 916.)

(3) That the Supreme Court of Florida in the Sherrill-Milam case

held that Chapter 10,026, Acts of 1925, and not Chapter 119, Acts of 1923, was controlling in the fixing of zones and rates of taxation,"

saying

The relators in that case were refunding bondholders, but the decision would doubtless have been the same as if they had been original bondholders, since only one levy is provided for and it applies to all bondholders alike."

and that

the Federal District Court and this Court are bound by [fol. 297] the construction placed upon these statutes by the highest court of the state."

This, it is submitted, was a clear holding that the Sherill-Milam case, by judicial construction, had fixed the rates under Chapter 10,026, Acts of 1925, as the applicable rates for all bonds, for the court goes on to say:

"Accepting the Supreme Court's construction of its meaning and effect upon earlier Acts of the Legislature, it remains our duty to inquire whether Chapter 10,026, as so construed, impairs the obligation of plaintiff's contract." (Text 917.)

(4) That the plaintiff as a bondholder had not shown any violation of the contract clause of the Federal Constitution by reason of the increase of taxes made by the 1925 Act, and that it was claimed that as a landowner he could not complain.

(5) That if the 1925 Act decreased taxes on part of the lands below the rates fixed by Chapter 9119, Acts of 1923, the plaintiff had the right to show, if it could that the reduction impaired the obligation of the contract of the 1923 bonds, and to recover a judgment and resort to mandamus to seek restoration of the old levy on the lands as to which the reduction applies, but not to mandatory injunction.

(6) That the decree of the lower court should be reversed with directions to dismiss the bill without prejudice to the right of the plaintiff to proceed at law,

"to compel the restoration of taxes as levied by Chapter 9119, Acts of 1923, wherever such taxes have been reduced under the provisions of Chapter 10,026, Acts of 1925."

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

438

3

8

-

9

9



From this analysis it appears that so far as the Florida Ranch & Dairy case spoke on the applicable tax rates for all bonds, it regarded the Florida Supreme Court in the Sherrill-Milam case as settling, by statutory construction, that the rate was that of the 1925 Act, saving a possible question as to reduction below the 1923 rate as to some lands. It spoke not at all of the question of diversion of [fol. 298] tax proceeds, nor on the question of the validity of provisions for redeeming tax certificates by the use of bonds and coupons at par, and the cancellation of some tax certificates without any payment at all, for Chapter 10,026, Acts of 1925, there under attack, presented none of those questions. On the question that the 1937 Act reduces all rates the decision in principle sustains the plaintiffs here. Evidently this court did not cite the Florida Ranch & Dairy case for its holding that a three judge case under 28 U. S. C., Section 380 was not presented, for here the Trustees of the Internal Improvement Fund, state officers administering a state trust, are defendants. By taking jurisdiction and pronouncing judgment this court holds the case to be one for three judges. If it did not so intend, the remedy was not dismissal of the bills, but was withdrawal of the judges called in leaving decision to the single District Judge.

See

Gully v. Interstate Natural Gas Co., 292 U. S. 16,
78 L. Ed. 1088.

It is supposed that the Florida Ranch & Dairy case was cited because of the holding of the Circuit Court of Appeals, in its discretion, that the bill should not be retained as one for mandatory injunction to compel the restoration of the 1923 rates as to any lands on which the taxes were reduced below those rates, a conclusion largely influenced, if not dictated by, the fact that for one of the years as to which injunction was sought the Florida court had awarded a mandamus for levy at the 1925 rate. But the case at bar seeks much more than an injunction against tax levies at reduced rates. Manifestly recovery of judgment and mandamus to levy taxes at 1925 rates would not reach the question of diversion of proceeds of acreage taxes under the 1931 Act, and the 1937 Act, nor the question of redemption of tax certificates by the use of bonds and coupons [fol. 299] and the cancellation of some tax certificates without payment of all. The original bill and first supplemental

bill payed a decree ascertaining the amount of bonds issued and outstanding, and adjudging the validity thereof; that the drainage taxes are special assessments and by statute appropriated and pledged for the payment of principal and interest; that the Board of Commissioners are required by law to prepare annually and send down tax lists to tax assessors of the counties of the district at the rates set forth in paragraph (11) of the original bill; that the court enjoin the custodian of funds from paying out save on bonds and interest in default; that the court enjoin the Board of Commissioners from selling any tax certificates or lands represented thereby transferred to them by the Trustees of the Internal Improvement Fund and from selling tax certificates and lands bid off to said Board under the Act of 1929; that the court enjoin the Board from permitting any tax sale certificates or lands represented thereby to be redeemed under the provisions of the 1937 Act and enjoining the Clerks of the Circuit Courts from accepting bonds or interest coupons, or anything other than money in the redemption of tax certificates; that the court enjoin the Board from selling tax certificates or land represented thereby which should be bid off to them under the Acts of 1929 and 1931; that the court adjudge that the Acts of 1929 and 1931 impair the obligation of the contract under which outstanding bonds were issued, and that such Acts are void as against the complainants and other holders of bonds and interest coupons. The second supplemental bill alleged the prior proceedings and the enactment of the 1929, and 1931 Acts, and the 1937 Legislation, now Chapter 17,902, Acts of 1937, showing that the Act reduces taxes from the rates running from \$1.50 per acre to 10¢ per acre, so that they ran from a maximum of 90¢ per acre to 3¢ per acre, or from an aggregate of \$2,250,000.00 per year to an aggregate of about \$595,000.00, and that such latter aggregate was insufficient to pay principal and interest falling due annually without paying anything on bonds or interest falling due prior to 1937. The second supplemental bill further sets up fully the reductions and diversion of taxes in the 1937 Act complained of, and the authority there given to make compromises of taxes and cancellation without payment as well as the features as to receiving bonds and coupons at par instead of cash in payment or redemption of tax certificates for the taxes of 1936 and prior years.

That bill prayed for all the orders and decrees prayed by the original bill and the first supplemental bill; that the Board of Commissioners be enjoined from sending down tax lists except at the rates appropriated and pledged for the payment of bonds; that the assessors be enjoined from receiving lists and entering them upon their rolls at any less rates than those under which bonds were issued; that the collectors be enjoined from collecting or paying over at other rates; that the Board of Commissioners be enjoined from compromising, adjusting, or cancelling without payment any taxes levied for 1936 and prior years; that the Board and Trustees of the Internal Improvement Fund be enjoined from making certain adjustments and settlements impairing the rights of bondholders; that the Board of Commissioners be enjoined from cancelling any acreage tax liens and assessments upon any property which shall become the property of the United States or under its control, management or maintenance which were imposed by the statute under which bonds were issued and the proceeds of which were pledged for their payment; that the Board be enjoined from changing the time of redemption of tax sales for 1936 and prior years; that the court decree that the Act of 1937 impairs the obligation of the contract of outstanding bonds and is void as against them; that the court enjoin the Board of Commissioners and the clerks of the Circuit Courts from accepting bonds or interest coupons, or anything other than money in the redemption of [fol. 301] any tax sale certificates or tax liens on land imposed by Everglades Drainage District acreage taxes; that an order be made directing the Board of Commissioners to send down tax lists for 1937 and subsequent years at the rates and amounts upon which the bonds were issued and set apart, appropriated and pledged for the payment of bonds and interest; and for temporary restraining order, to be made perpetual on final hearing in the particulars prayers (3) to (9) and (12) of the second supplemental bill.

This recapitulation, which does not include in detail the relief sought against the Trustees of the Internal Improvement Fund, shows that the relief prayed goes far beyond the narrow question involved in the Florida Ranch & Dairy Corporation case and in part, at least, is for declaratory decrees of the character authorized by 28 U. S. C. Section 400 and, it is submitted, that the court heretofore so regarded it by proceeding to determine the 1923 rates to be

applicable ones. Therefore it is submitted that there is no error in dismissing the bill and supplemental bills of complaint. It is thought by the plaintiffs to be obvious that judgment on defaulted bonds and interest coupons and mandamus to levy taxes will not afford adequate relief and will not at all determine the questions involved as to the right to discharge taxes for 1936 and prior years by the receipt of bonds and coupons instead of cash and, as to some of the taxes, to cancel without any payment.

(7) The court erred in denying any injunction and in dismissing the bill of complaint overlooked the fact that the provisions of the 1931 and 1937 Acts for the use of bonds and interest coupons in the redemption of tax certificates and the cancellation of certain tax certificates without any payment are clearly void, and that similar provisions as in another drainage district have been held to be void by the Supreme Court of Florida and by the Circuit Court of Appeals of this Circuit, and injunction was held to be the proper remedy, so that the bills here do contain merit and should not have been dismissed.

First State Savings Bank v. Little River Drainage District, 122 Fla. 304, 165 So. 48;

Wall v. McNee (C. C. A. 5), 87 Fed. (2) 763.

An examination of the statutes referred to in the last case cited Florida case shows their substantial similarity to the provisions of the 1931 and 1937 Acts under attack. Such examination shows:

(a) Section 1 of Chapter 15,054 of 1931, Section 999 (2) C. G. L. Sup., gave district and other boards the right to provide by resolution to make bonds and delinquent interest coupons receivable at par in the redemption of lands from tax sales for unpaid taxes for 1929 and prior years and held by such Board. Sections 2 to 7, Section 999 to Section 999 (8), C. G. L. Sup., provided that such bonds and coupons should be held in substitution for the certificates, and should be deposited with the State Treasurer as custodian thereof to keep and hold the same to the account of the parties in interest.

(b) Section 1 of Chapter 14,712 of 1931, Section 1474 C. G. L. Sup., gave the governing board of each drainage or sub-drainage district the right to provide by resolution that bonds or other obligations including matured

interest coupons, shall be receivable at par in redemption of tax sale certificates which at the time of the passage of the Act were held by or in trust for such board and in the purchase of lands the title to which, by virtue of tax sales, has vested in such district or governing board. Section 2 of that Act, Section 1474 (2), C. G. L. Sup., required all fees and costs of redemption allow- by law to be paid in cash, and excluded from the provisions of the Act districts [fol. 303] wholly in one county involved at the passage of the act in litigation in the Supreme Court of the state.

(c) Section 1 of Chapter 16,251 of 1933; Section 999 (20) C. G. L. Sup., is precisely the same as Section 1 of Chapter 15,054 of 1931, noticed above, except that it applies to tax certificates for taxes levied for 1932 and any or all prior years. It was held void as to bondholders by two Circuit Judges and a District Judge, and injunction granted in Keefe, et al. v. City of St. Petersburg, et al., 5 Fed. Supp. 132. Sections 2 to 7 of that 1933 Act, Sections 999 (21) to 999 (27), C. G. L. Supp., are substantially the same as the like sections of Chapter 15,054 of 1931, except for the omission of a provision that unpaid current taxes are to be paid in cash and the addition of provision that the provisions of the Act are cumulative, and that taxes due the state shall be paid in cash.

(d) Section 1 of Chapter 16,256 of 1933, Section 1474 (9), C. G. L. Supp., made bonds and matured interest coupons or other obligations of any drainage or sub-drainage district receivable at par in lieu of money in the payment of all taxes and assessments levied or assessed by such districts for 1932 of subsequent years, except that so much or any part of such tax or assessment as is applicable primarily or solely to maintenance of works and improvements, or to the administration of the affairs of the district, was made payable solely in cash. Section 2 of that Act, Section 1474 (10), C. G. L. Supp., gave tax collectors the right, if unable to determine from the records of their offices the amounts applicable to maintenance or administration, to accept the certificate of the secretary or other authorized officer of the district as to that fact, and also to accept such certificate that so much of the tax or assessment [fol. 304] ment as should not be shown by the certificate to be applicable primarily or solely to maintenance or administration had been paid by delivery to the certifying officer

of bonds or matured interest coupons or other obligations of such district, and upon the payment of the remaining amount the tax collectors should issue their tax receipts in full. The Section further provided that the tax collectors should be entitled to compensation as if the amount paid had been in cash.

If such provisions as the above contained in the Acts of 1931 and 1933 are no defense against a bill for injunction against the use of bonds and coupons, as was determined in the last above cited cases, it follows that similar provisions in Chapter 14,717 of 1931 and Chapter 17,902 of 1937, here attacked must be void as to bondholders. And if the court, by reason of *Erie v. Tompkins*, is constrained to regard as binding on it the case of *State ex rel. v. Sholtz*, 112 Fla., 756, 150 So. 878, in respect of the Trustees of the Internal Improvement Fund, it seems to follow that the court should have been constrained to regard as binding Florida law the adjudication in *First State Savings Bank v. Little River Drainage District*, 122 Fla. 304, 165 So. 48 that bonds and interest coupons cannot, as against the objection of bondholders, be made receivable in the redemption of tax certificates, and that such tax certificates are equitable assets "as security for the payment of the district's bonds" (this last being almost precisely the view of Judge Bryan in his dissent in 57 Federal (2) 1048, 1063, when he said: "The Trustees, in my opinion, hold the certificates lands in trust for the bondholders and other creditors of the drainage District"), which can be liquidated only

"in accordance with the terms of law under which such assets were originally provided to be collected and held."

[fol. 305] (8) That the Court has not, as required by equity rule #70½ as amended in November, 1935, made special findings of fact and separate conclusions of law thereon.

(9) The court in its judgment of August 2, 1938 overlooks the fact that at the oral argument of this case on March 3, 1938, Mr. Fred H. Kent, counsel for the defendant Board, admitted in open court that the 1937 Act is void in the particulars complained of as against bondholders, and explained that it was passed as part of the machinery for a proposed refunding of the indebtedness of the district:

(10) If notwithstanding the foregoing reasons the court adheres to the view that there should be a decree of dismissal, then it is respectfully submitted that the order made should be modified so as to be without prejudice and thus avoid any future contention that the judgment of this court is res judicata of the rights asserted by the plaintiffs for that this court appears to hold by its judgment and order of August 2, 1938 that the Supreme Court of Florida has decided all questions here involved adversely to the plaintiffs.

Wherefore, the plaintiffs pray that a rehearing of this cause be granted and that the judgment and order of August 2, 1938 be vacated and set aside.

William Roberts, Watson & Pasco & Brown, Solicitors
for Plaintiffs.

[fol. 306] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING REHEARING—Filed September 3, 1938

This cause coming on to be heard upon a petition for rehearing in the above entitled cause filed herein by the plaintiffs on the 19th day of August, 1938;

It is Considered, Ordered, Adjudged and Decreed that the said petition be overruled and the rehearing denied.

Done and Ordered this the 2nd day of September, A. D. 1938.

(S.) Rufus E. Foster, Circuit Judge. (S.) Louie W. Strum, District Judge. (S.) A. V. Long, District Judge.

[fol. 306a] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed November 22, 1938

To the Honorable, the Judges of the said Court:

Now come plaintiffs, H. C. Rorick, Joseph R. Grundy and J. R. Easton, and feeling themselves aggrieved by the judg-

ment and decree of the United States District Court of three judges in the above entitled cause made and entered in the above entitled cause August 2, 1938, rehearing denied September 2, 1938, pursuant to Sec. 266 of the Judicial Code (28 U. S. C. A. 380), pray that an appeal therefrom to the Supreme Court of the United States be allowed. The particulars wherein plaintiffs consider the final decree to be erroneous are set forth in their assignment of errors filed with the clerk, pursuant to rule 9 of the Rules of the United States Supreme Court, to which reference is made; there has also been filed herewith a statement as to the jurisdiction of the Supreme Court of the United States as provided by rule 12 of the Rules of the United States Supreme Court. [fols. 306b-375]. Wherefore, in order that your petitioners may obtain relief in the premises, your petitioners pray that an appeal on their behalf to the Supreme Court of the United States for the correction of errors complained of and herewith duly assigned, be allowed and granted agreeably to the statutes and rules of said court in such cases made and provided, and that a proper order covering the security required of the petitioners may be made.

Dated, Nov. 22, 1938.

(S.) William Roberts, (S.) Watson & Pasco & Brown,
W. H. Watson, Samuel Pasco, Solicitors for Plain-
tiffs, Petitioners.

[fol. 376] IN UNITED STATES DISTRICT COURT FOR THE NORTH-
ERN DISTRICT OF FLORIDA

In Equity

H. C. RORICK, JOSEPH R. GRUNDY and J. R. EASTON, Plaintiffs,

vs.

BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT
et al., Defendants

ORDER ALLOWING APPEAL—November 22, 1938

The plaintiffs in the above styled suit and each of them having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment or decree made and entered in the above entitled suit on the 2d day of August, 1938, rehearing which was

denied September 2, 1938, and having presented and filed their petition for appeal, assignment of errors with prayer for reversal, and separate statement as to the basis of the jurisdiction of the Supreme Court of the United States to review the said decree, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided;

It is Now Here Ordered that appeal be and the same is hereby allowed to the Supreme Court of the United States from the District Court of the United States for the Northern District of Florida in this cause, as provided by law, and it is further ordered that the Clerk of the Court appealed from shall prepare and certify a transcript of the record of the proceedings and decree in this cause, and trans-[fols. 377-382] mit the same to the Supreme Court of the United States in accordance with the rules thereof.

And it is Further Ordered that security for costs on appeal be and is fixed in the sum of Two Hundred Fifty Dollars.

Done and Ordered at Gainesville, Florida, on this the 22nd day of November, 1938.

(S.) Augustine V. Long, United States District Judge.

Bond on appeal for \$250.00, approved and filed November 22, 1938, omitted in printing.

[fol. 383] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed November 22, 1938

Come now the plaintiffs and assign the following several errors in the record and proceedings herein:

(1) The court erred in making and entering its final judgment and decree of August 2, 1938, dismissing the bill of complaint and supplemental bills of complaint herein.

(2) The court erred in its said judgment and decree in denying the application to reinstate the interlocutory injunction granted by it on September 6, 1932.

(3) The court erred in its said judgment and decree in denying the application for an interlocutory injunction restraining the enforcement of Chapter 17902, Laws of Florida, Acts of 1931.

[fol. 384] (4) The court erred in its said judgment and decree, in its failure to find the facts specially, and to state separately its conclusions of law thereon.

(5) The court erred in making and entering its order and decree of September 2, 1938 overruling and denying plaintiffs application and petition for rehearing.

(6) The court in its said judgment and decree of August 2, 1938 erred in holding that the Supreme Court of Florida had passed upon all questions presented, adversely to plaintiffs, particularly in respect of those questions presented involving alleged impairment of the obligation of plaintiffs' bond contracts, in violation of Section 10 of Article I of the Constitution of the United States.

(7) The court in its said judgment and decree of August 2, 1938 erred in holding in effect that, as to all questions presented, it was bound by the construction placed upon the involved statutes by the Supreme Court of Florida, particularly as to those questions presented involving a substantial Federal question under Section 10 of Article I of the Constitution of the United States as to an alleged impairment by the State of Florida of the obligation of bondholders' contracts.

(8) The court erred in its judgment and decree of August 2, 1938 in holding itself bound by state court construction as to the relation and duties, in the matter of taxes, of the Trustees of the Internal Improvement Fund in respect of lands in Everglades Drainage District bid off and certified to the Trustees for taxes, particularly since: (a) the jurisdiction of the court was based not alone on diversity of citizenship of the parties, but also on a substantial Federal question, viz: the alleged impairment of plaintiff bondholders' contracts in violation of Article I, section 10 of the Constitution of the United States; (b) prior to the decision thought to furnish the state court construction, this court, [fol. 385] had made its own interpretation (*Rorick v. Board of Commissioners*, 57 Fed. (2) 1048) at variance in this respect with the decision thought to furnish the state court

construction; (c) the decision thought to furnish the state court construction actually presented no controversy, since it was a mandamus proceeding to which only the Trustees and the Board of Commissioners were parties, both of whom had herein filed their answers to the bill and supplemental bill of complaint, and asserted in said answers substantially the same position as to the aforesaid relation and duties of the Trustees, before the mandamus proceeding was commenced, so that the state court merely in said mandamus proceeding (*State ex rel, Board of Commissioners v Sholtz*, 112 Fla. 756) adopted the position as to which both parties were in accord and as to which there was no real controversy between them.

(9) The court erred in its judgment and decree of August 2, 1938, in treating the cause and application as if the only real question presented was the liability of the Trustees of the Internal Improvement Fund to take and pay for Everglades Drainage District tax certificates bid off to them, and to pay taxes on the certificated lands.

(10) The court erred in its judgment and decree of August 2, 1938, in holding in effect that the provisions of Chapter 13633, Laws of Florida, Acts of 1929, Chapter 14717, Laws of Florida, Acts of 1931, and Chapter 17902, Laws of Florida, Acts of 1937, by reducing the acreage taxes pledged for the payment of bonds by Section 1560, Compiled General Laws of Florida, 1927, below the rates fixed by Chapter 9119, Acts of 1923 (the last Act under which original bonds were issued) and below the rates fixed by Chapter 10026, Acts of 1925, which said last Act was in force when refunding bonds were issued, from an aggregate of \$2,250,000.00 per year to approximately \$595,000.00 per year, did not impair the obligation of the contract of bonds of Everglades Drainage District, and the rights of holders hereof, in violation of Article I, Section 10, of the Constitution of the United States.

(4) The court erred in its judgment and decree of August 2, 1938, in holding in effect that Chapter 14717, Laws of Florida, Acts of 1931, as amended by Chapter 17902, Laws of Florida, Acts of 1937, by splitting the acreage taxes and diverting and appropriating a portion of the proceeds of acreage taxes to purposes other than the payment of bond principal and interest in default since 1931.

did not impair the obligation of the contract of bonds of Everglades Drainage District and the rights of holders thereof, in violation of Article I, Section 10 of the Constitution of the United States.

(12) The court erred in its judgment and decree of August 2, 1938, in holding in effect that Chapter 14717, Laws of Florida, Acts of 1931, as amended by Chapter 17902, Laws of Florida, Acts of 1937, by making bonds and interest coupons, instead of cash, receivable in redemption of tax sale certificates, did not impair the obligation of the contract of bonds of Everglades Drainage District and the rights of holders thereof, in violation of Article I, Section 10 of the Constitution of the United States.

(13) The court erred in its judgment and decree of August 2, 1938, in holding in effect that Chapter 14717, Laws of Florida, Acts of 1931, as amended by Chapter 17902, Laws of Florida, Acts of 1937, by authorizing the Board of Commissioners of Everglades Drainage District to cancel without payment certain acreage tax certificates did not impair the obligation of the contract of bonds of said District, and the rights of the holders thereof, in violation of Article I, Section 10 of the Constitution of the United States.

(14) The court in its opinion, judgment, and decree of August 2, 1938, erred in holding that the Supreme Court of Florida, in certain cases cited in said opinion, had decided [fol. 387] the questions presented adversely to plaintiffs, particularly since Chapter 17902, Laws of Florida, Acts of 1927, under attack, had not been enacted at the time of the respective decisions in said cited cases, and since the said cited cases did not, nor did any other decision of said Supreme Court of Florida hold, in fact or in principle, that the features of Chapter 17902, aforesaid, under attack were valid against the objection of bondholders thereto made in and by the second supplemental bill of complaint herein.

(15) The court erred in its opinion, judgment, and decree of August 2, 1938, in holding that State ex rel Board of Commissioners v. Sholtz, 112 Fla. 756, Martin v. Dade Muck and Co., 95 Fla. 530, State ex rel Sherrill and Vann v. Ham, 113 Fla. 491, or any other Federal or Florida case, had decided anything that required the dismissal of the

bill of complaint and supplemental bills of complaint, or the denial of the motions of plaintiffs for reinstatement of interlocutory injunction and for interlocutory injunction.

(16) The court erred in its opinion, judgment and decree of August 2, 1938, in sustaining as valid against the attacks made upon it, Chapter 17902, Laws of Florida, Acts of 1937, by dismissing the second supplemental bill of complaint herein, said bill being duly supported by the oath of the plaintiff, H. C. Rorick, and said bill alleging, without denial, that said Chapter 17902, Acts of 1937, reduced the acreage taxes to which bondholders were entitled to look for payment, from an aggregate of \$2,250,000.00 to \$595,000.00, and that such latter aggregate was insufficient to pay principal and interest of bonds falling due annually, without paying anything on bonds or interest falling due prior to 1937, that said Chapter provided for the receipt of bonds and coupons at par in payment of acreage taxes and acreage tax redemptions, and gave authority to cancel and compromise acreage tax certificates without payment of anything, and further provided for the assessment of taxes at the [fol. 388] rates fixed in said 1937 Act.

(17) The court in its opinion, judgment, and decree of August 2, 1938, erred in that it in effect sustained as valid the provisions of Chapter 14717, Laws of Florida, Acts of 1931, and Chapter 17902, Laws of Florida, Acts of 1937, authorizing the use of bonds and coupons in the redemption of acreage taxes and acreage tax certificates, and the cancellation of acreage tax certificates without any payment, notwithstanding that the Supreme Court of Florida in *First State Savings Bank v. Little River Drainage District*, 122 Fla. 304, and the Circuit Court of Appeals for the Fifth Circuit in *Wall v. McNee*, 87 Federal (2) 763, had held void similar statutory provisions with respect to the bonds of another drainage district on principles clearly demonstrating the invalidity of the 1931 and 1937 Acts, aforesaid, in the respect attacked.

(18) The court in its opinion, judgment, and decree of August 2, 1938, erred in holding that, from an examination of the Florida cases therein cited, it appeared that the Supreme Court of Florida had passed upon the questions presented adversely to plaintiffs, and that the court was bound by the construction placed upon the involved statutes by the highest court of the state, because:

(a) Examination of the cited cases disclosed that, so far as passing adversely to plaintiffs on the questions presented, the Supreme Court of Florida has determined that Chapter 10026, Laws of Florida, Acts of 1925, levying acreage taxes on lands in Everglades Drainage District to service its bonds, is a part of the contract of bondholders with the Board of Commissioners of the District; that such taxes are pledged and appropriated for the payment of such [Ch. 389] bonds, and may not by later legislation be reduced in amount so long as there are bonds outstanding for the payment of which the taxes are levied, appropriated and pledged. (State ex rel., Sherrill and Vann v. Milam, 113 Fla. 1.)

(b) Plaintiffs' second supplemental bill of complaint alleges, and the motion to dismiss admits, that Chapter 17902, Laws of Florida, Acts of 1937, purports to reduce substantially the amount of taxes levied for the payment of outstanding bonds, that defaults exist both as to principal and interest of the outstanding bonds, and that the taxes purported to be levied by said Chapter 17902, are insufficient to provide for the payment of the principal and interest of the outstanding bonds.

(19) The court erred in its opinion, judgment, and decree August 2, 1938, in holding that:

" * * * The Supreme Court of Florida has passed on the questions presented to this court adverse to plaintiffs, and notwithstanding the decision in the Rorick case, 221 Fed. (2d) 1048, this court is bound by the construction placed upon these statutes by the highest court of the State. * * * "

(20) The state court construction was favorable, rather than adverse, to plaintiffs; and, if bound by it at all, the District Court was bound to recognize that there was equity in the bill of complaint and the supplemental bills of complaint seeking relief from state impairment of contract obligations by later legislative acts of the very type held to be invalid in decided cases; and said District Court was thus in error in dismissing the bills of complaint.

If it were bound by such construction, the District Court, far from dismissing the bills of complaint, should

have granted the application for interlocutory injunction against the enforcement of Chapter 17902, Laws of Florida, Acts of 1937, purporting to reduce the amount of taxes [fol. 390] levied by Chapter 10026, Laws of Florida, Acts of 1925, and pledged and appropriated for the payment of outstanding bonds, particularly in view of the allegations of the second supplemental bill of complaint, admitted by the motion to dismiss, that the taxes levied by said 1937 act are substantially less in amount than those levied and pledged by said 1925 act, and further in view of the holding of the Supreme Court of Florida that such 1925 taxes might not constitutionally be so reduced.

(c) There were presented questions as to whether, contrary to the provisions of Section 10 of Article I of the Constitution of the United States, the obligation of the contract of plaintiff bondholders had not been, and was not then being, violated by later state legislation purporting to lower pledged rates of taxation; and these were substantial Federal questions as to which the holding of the highest court of the state, even if adverse to plaintiffs, would not be binding on the District Court.

(d) The jurisdiction of the District Court is based not alone on diversity of citizenship of the parties, but also upon the substantial Federal question of the alleged impairment of the obligation of the contracts of the plaintiff bondholders with the Board of Commissioners of Everglades Drainage District, by the enactment by the Florida Legislature of the subsequent Act, Chapter 17902, Laws of Florida, Acts of 1937, in violation of Section 10 of Article I of the Constitution of the United States; and because the decisions of the Supreme Court of Florida, that is, *State ex rel. Board of Commissioners v. Sholtz*, 112 Fla. 756, and *State ex rel. Sherrill and Vann v. Milam*, 113 Fla. 491, were made after the filing of the bill of complaint herein, and after the United States District Court herein had entered its order and decree of September 6, 1932, construing the statutes of the State of Florida, being among others Chapters 6456 of 1913, [fol. 391] 9119 of 1923, and 10026 of 1925, on the former application for interlocutory injunction which was granted: and since the only difference between the decision of the Supreme Court of Florida and that of the United States District Court herein construing said statute in this respect

is that the Supreme Court of Florida determined that the Act of 1925, Chapter 10026 aforesaid, is the Act which constitutes part of the bond contracts, and levies and appropriates the taxes for the payment of the bonds, *State ex rel. Sherrill and Vann v. Milam*, 113 Fla. 491, while said United States District Court had determined that the 1923 Act, Chapter 9119 aforesaid, is the Act which constitutes part of the bond contracts, and levies and appropriates taxes for the payment of the bonds; and since, further, the amount of the taxes purporting to be levied by said Act of 1937 is substantially less than those levied either by the Act of 1923 or by the Act of 1925, and is less than sufficient to pay the principal and interest of the outstanding bonds, as alleged in the second supplemental bill of complaint herein, and admitted by defendants' motion to dismiss.

(20) The court erred in its opinion, judgment, and decree of August 2, 1938 in holding itself bound by State court construction as to the relation and duty, in the matter of taxes, of the Trustees of the Internal Improvement Fund with respect to land in the Everglades Drainage District bid off for the Trustees at tax sales, because:

(a) prior to the decision (*State ex rel. Board of Commissioners v. Sholtz*, 112 Fla. 756) thought to effect the state court construction, the bill of complaint herein had been filed, and the decision of the District Court of the United States (*Rorick v. Board of Commissioners*, 57 Fed. (2) 1048) had been rendered, whereby the District Court herein made its own interpretation.

[fol. 392] (b) The only parties to the mandamus proceeding in the Florida Supreme Court (*State ex rel. Board of Commissioners v. Sholtz*, supra) thought to effect the state court construction, were the Board of Commissioners of Everglades Drainage District, as relator, and the said Trustees of the Internal Improvement Fund, as respondents. And, at the time said mandamus proceeding was instituted, both said relator and said respondents had as defendants herein filed their answers to the bill of complaint and supplemental bills of complaint herein, taking in said answers substantially the same position as to the relation and the duty of the Trustees in respect of the bid-off and certificated land as that later adopted in said state court mandamus proceeding, the state court merely accept-

ing the only position in this respect which the parties have taken in said mandamus proceeding, and there being, therefore, no actual controversy presented to said state court in the case thought to effect the state court construction.

(c) So much of the doctrine of *Erie Railroad Co. v. Tompkins*, 82 Law Ed. 787, as requires United States Courts in certain situations to accept state court construction is here inapplicable, as the jurisdiction of the United States District Court herein is based not alone on diversity of citizenship of the parties, but on a substantial Federal question, namely, the alleged impairment of the obligation of the bond contracts, in violation of Article I, Section 10 of the Constitution of the United States, and the United States District Court herein in substance reversed its position in respect of the aforesaid relation and duty of said Trustees in respect of such bid-off and certificated lands, which was part of the obligation of the bond contracts; and did so reverse itself by erroneously interpreting and applying the doctrine of *Erie Railroad Co. v. Tompkins*, supra, to a state court decision made by the state court under the [fol. 393] foregoing circumstances.

(21) The court erred in its opinion, final judgment, and decree of August 2, 1938, in its statement:

“ * * * It appears that the Supreme Court of Florida has passed upon the question presented to this court adverse to the plaintiffs * * * ”

for the reason that the statement is substantially erroneous and inaccurate in that the Supreme Court of Florida has determined that Acts of the Legislature of 1929 and 1931 of that State enacted after the outstanding bonds of Everglades Drainage District were issued and sold, which Acts purported to reduce the amount of the taxes levied in the Act of 1925, Chapter 10,026 of the Laws of Florida, for the payment of bonds, and which were appropriated for that purpose, impaired the obligation of the bond contracts between the Board of Commissioners of the District and the holders of the outstanding bonds, but said court has not purported to pass specifically upon the validity of the Act of 1937, Chapter 17,902, Laws of Florida, Acts of 1937, or to enjoin its enforcement; and in that an application was made to the United States District Court herein for a re-

hearing for the purpose, among others, of correcting said erroneous statement, and said application was denied; the foregoing erroneous statement is substantially prejudicial to the interests of the plaintiffs herein in that it gives the impression that the United States District Court herein by its opinion is purporting to construe, erroneously, the decision of the Supreme Court of Florida, and the Board of Commissioners of Everglades Drainage District, and the Tax Assessors and Tax Collectors of the counties embraced within said District, whose duty it is to enter the proper taxes on the tax rolls and to collect the same, are by virtue of the erroneous statement aforesaid of the United States District Court in its opinion herein as to their duties in respect of the entry and collection of the taxes, misinformed and may be misled into thinking that they are authorized [fol. 394] to perform said duties pursuant to the statutes of the State of Florida, including said Chapter 17,902, which violates the obligation of the contracts of bondholders.

(22) The court erred in its opinion, final judgment, and decree of August 2, 1938, in stating:

“ * * * This court is bound by the construction placed upon these statutes by the highest court of the state * * * ”

for the further reasons that the Legislature of the State of Florida enacted a series of statutes upon the application of the Board of Commissioners of Everglades Drainage District, the purpose and effect of which statutes was to impair the obligation of the bond contracts between the Board of Commissioners of Everglades Drainage District, and the holders of the outstanding bonds of said District, including the plaintiffs herein, the first of said Acts being enacted in the year 1929 and being Chapter 13,633, Laws of Florida, Acts of 1929, the second of said Acts being enacted in the year 1931, and being Chapter 14,717, Laws of Florida, Acts of 1931, and the third of said Acts being enacted in the year 1937, and being Chapter 17902, Laws of Florida, Acts of 1937, the said Act of 1937 having been enacted upon the application of the Board of Commissioners of said District after the decision of the United States District Court herein on the former application for interlocutory injunction against the enforcement of said Acts of 1929 and 1931, *Rorick v. Board of Commissioners*, 57

Fed. (2) 1048, and in that the Supreme Court of the State of Florida has not passed upon the validity of the Act of 1937, nor has it issued an injunction restraining the enforcement thereof. Notwithstanding the decision of the United States District Court herein, *Rorick v. Board of Commissioners*, *supra*, and of the Supreme Court of the State of Florida, *State ex rel. Sherrill and Vann v. Milan*, 113 Fla. 491, the Act of 1937, Chapter 17,902, Laws of Florida, Acts of 1937, was enacted by the Legislature of the [fel. 395] State of Florida for the purpose of imposing duties upon the assessors of taxes in counties lying within Everglades Drainage District to enter the taxes levied therein upon their tax rolls, and upon the tax collectors of said counties to collect the same, at the substantially reduced rates provided in the said Act of 1937. To prevent such action an interlocutory injunction by the United States District Court herein was required by plaintiffs and was prayed for and applied for herein.

Wherefore, plaintiffs pray that the said judgment and decree of the United States District Court herein dated August 2, 1938, be reversed; that the motion of defendants to dismiss the bill and supplemental bills of complaint be denied; that plaintiffs' motion for an interlocutory injunction herein be reinstated and said motion granted; that plaintiffs' motion to reinstate the former interlocutory order and decree be reinstated and said motion granted; and for such other, further, and different relief as in the premises may be lawful and just.

(S.) William Roberts, Watson & Pasco & Brown,
W. H. Watson, Samuel Pasco, Solicitors for Plaintiffs.

Presented November 22, 1938. (S.) Augustine V. Long,
Judge.

[fols. 396-399] Citation, in usual form, showing service on Geo. Couper Gibbs et al., filed November 23, 1938, omitted in printing.

[fol. 400] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRECIPE FOR TRANSCRIPT OF RECORD—Filed November 23,
1938

[fol. 401] H. C. Rorick, Joseph R. Grundy, and J. R. Easton, the plaintiffs, having taken an appeal to the Supreme Court of the United States from the judgment and decree in the above styled cause dated August 2, 1938, rehearing of which judgment or decree was denied by order made in said cause on September 2, 1938, file this their præcipe indicating the portions of the record to be incorporated into the transcript and thereupon indicate and designate the following portions of the record in said cause to be incorporated into the transcript of the record on appeal, to-wit:

(1) The original bill of complaint filed May 19, 1931, with all exhibits and all amendments thereto.

(2) The supplemental bill of complaint filed July 4, 1931, and all amendments thereto.

(3) The orders of November 14, 1931, calling a three Judge Court, and the amendment thereto of January 12, 1932 filed January 16, 1932.

(4) Petition or motion for interlocutory injunction filed November 14, 1931.

(4a) Acknowledgment of service of the petition or motion for interlocutory injunction by Cary D. Landis as Attorney General showing service on the Attorney General and the Governor of the State of Florida, dated January 16, 1932.

(4b) Order of November 25, 1931 granting temporary restraining order and postponing hearing on application for interlocutory injunction.

(5) Order for interlocutory injunction of September 6, 1932 filed September 17, 1932.

(6) Order of September 6, 1932 filed September 17, 1932, of Judges Bryan, Sheppard and Strum denying motion of [fol. 402] the defendants to dismiss the bill of complaint and supplemental bill of complaint.

(7) Opinion of the three judge court of April 13, 1932 pronounced by District Judge Strum with dissenting opinion of Circuit Judge Bryan.

(8) Answer of the Trustees of the Internal Improvement Fund filed October 3, 1932.

(9) Answer of Doyle E. Carlton and others filed October 3, 1932.

(10) Answer of Board of Commissioners of Everglades Drainage District filed November 14, 1932.

(11) Answer of Ross C. Sawyer, et al. filed November 14, 1932.

(12) Order of February 23, 1933 granting motion of the defendants, Board of Commissioners of Everglades Drainage District, et al., to vacate the injunctive order of September 6, 1932, and denying motion of the plaintiffs for reduction of bond, together with the motion of the defendants, Board of Commissioners, et al., for vacation of such order and the motion of the plaintiffs for reduction of bond specified in such order.

(13) Order of July 16, 1937 granting motion of the plaintiffs for substitution of parties and leave to file second supplemental bill of complaint.

(14) The second supplemental bill of complaint presented July 16, 1937 and filed July 19, 1937.

(15) Motion of the Trustees of the Internal Improvement Fund to dismiss filed August 16, 1937.

(16) Motion of the Board of Commissioners of Everglades Drainage District, et al. to dismiss filed October 14, 1937.

(17) Motion of plaintiffs presented January 18, 1938 and filed January 19, 1938 for interlocutory injunction, re-instatement of the injunctive order of September 6, 1932, [fol. 403] and for the convening of a court of three judges to hear such motion.

(18) Orders of January 18, 1938 for hearing on March 3, 1938 and convening a court of three judges to hear the motion of the plaintiffs for interlocutory injunction and for re-instatement of the injunctive order of September 6, 1932.

(19) Notice of hearing of the application of the plaintiffs for re-instatement of the injunctive order of September 6, 1932, and for interlocutory injunction on the second sup-

plemental bill and on the original and supplemental bill, with affidavit of service thereof.

(20) Affidavit of H. C. Rorick to the truth of the bill and supplemental bills of complaint, such affidavit being filed March 3, 1938.

(21) Affidavit of Walter H. Lippincott to the truth of the original bill and supplemental bill of complaint, such affidavit being filed January 16, 1932.

(22) Affidavit of F. C. Elliott on behalf of the defendants filed in New Orleans March 3, 1938.

(23) Opinion and judgment and decree of Judge Foster, Strum and Long dated August 2, 1938

(24) The petition of the plaintiffs for rehearing filed August 19, 1938.

(25) Order and judgment of Judges Foster, Strum and Long of September 2, 1938 denying the petition of the plaintiffs for rehearing.

(26) The plaintiffs' petition for appeal to the Supreme Court of the United States.

(27) Plaintiffs' statement of jurisdiction particularly disclosing the basis upon which it is contended the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree.

[fol. 404] (28) Order allowing the appeal and fixing the amount of appeal bond.

(29) Plaintiffs' appeal bond.

(30) Plaintiffs' assignment of errors.

(31) The citation on appeal with acknowledgment of service thereof.

(32) Notice to defendants under Par. 2 of Rule 12 of the Rules of the Supreme Court with acknowledgment of service thereof and of copies of the petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction.

(33) This praecipe indicating the portions of the record to be incorporated into the transcript with acknowledgment of service of a copy thereof by counsel for appellees.

(34) The Clerk will omit from the transcript the portion of the captions to various pleadings and orders giving the title of the cause so as to avoid unnecessary repetition (noting as to each item such omission) except that items

23 to 33, inclusive, designated by this praecipe shall be completely set out.

William Roberts, Watson & Pasco & Brown, W. H. Watson & Samuel Pasco, Attorneys for Appellants, H. C. Rorick, Joseph R. Grundy, and J. R. Easton.

Service of a copy of the foregoing praecipe is hereby acknowledged as follows:

On November 22nd, 1938.

Kent, Wheeler & Crenshaw, by McCarthy Crenshaw, Solicitor- for Board of Commissioners of Everglades Drainage District.

[fol. 405] On November 22, 1938.

Geo. Couper Gibbs, Attorney General; W. P. Allen, Assistant Attorney General; M. C. McIntosh, Assistant Attorney General, Solicitor for Trustees of the Internal Improvement Fund of the State of Florida.

On November 22nd, 1938.

Kent, Wheeler & Crenshaw, by McCarthy Crenshaw, Solicitor- for defendants Clerks of the Circuit Court, Tax Assessors and Tax Collectors of Counties in Everglades Drainage District.

[fol. 406] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 407] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed January 4, 1939

In compliance with paragraph 9 of Rule 13, the appellants file the following statement of points on which they intend to rely and the parts of the record which they think necessary for the consideration thereof.

I

Statement of Points on Which Appellants Intend to Rely

The court below erred in its judgment and decree appealed from and opinion pronouncing same:

(1) In dismissing the bill of complaint and supplemental bills of complaint.

(2) In denying the application to reinstate the interlocutory injunction granted by it on September 6, 1932.

(3) In denying the application for an interlocutory injunction restraining the enforcement of Chapter 17902, Laws of Florida, Acts of 1937.

(4) In failing to find the facts specially, and to state separately its conclusions of law thereon.

[fol. 408] (5) In making and entering its order and decree of September 24, 1938 overruling and denying plaintiffs' application and petition for rehearing.

(6) In holding that the Supreme Court of Florida had passed upon all questions presented, adversely to plaintiffs, particularly in respect of those questions presented involving alleged impairment of the obligation of plaintiffs' bond contracts, in violation of Section 10 of Article I of the Constitution of the United States.

(7) In holding in effect that, as to all questions presented, it was bound by the construction placed upon the involved statutes by the Supreme Court of Florida, particularly as to those questions presented involving a substantial Federal question under Section 10 of Article I of the Constitution of the United States as to an alleged impairment by the State of Florida of the obligation of bondholders' contracts.

(8) In holding itself bound by state court construction as to the relation and duties, in the matter of taxes, of the trustees of the Internal Improvement Fund in respect of bonds in Everglades Drainage District bid off and certified to the Trustees for taxes, particularly since: (a) the jurisdiction of the court was based not alone on diversity citizenship of the parties, but also on a substantial Federal question, viz: the alleged impairment of plaintiff bondholders' contracts in violation of Article I, Section 10 of the Constitution of the United States; (b) prior to the decision thought to furnish the state court construction, said court had made its own interpretation (*Rorick v. Board of Commissioners*, 57 Fed. (2), 1048) at variance in this respect with the decision thought to furnish the state court con-

struction; (c) the decision thought to furnish the state court [fol. 409] construction actually presented no controversy, since it was a mandamus proceeding to which only the Trustees and the Board of Commissioners were parties, both of whom had herein filed their answers to the bill and supplemental bill of complaint, and asserted in said answers substantially the same position as to the aforesaid relation and duties of the Trustees, before the mandamus proceeding was commenced, so that the state court merely in said mandamus proceeding (*State ex rel., Board of Commissioners v. Sholtz*, 112 Fla. 756) adopted the position as to which both parties were in accord and as to which there was no real controversy between them.

(9) In treating the cause and application as if the only real question presented was the liability of the Trustees of the Internal Improvement Fund to take and pay for Everglades Drainage District tax certificates bid off to them, and to pay taxes on the certificated lands.

(10) In holding in effect that the provisions of Chapter 13633, Laws of Florida, Acts of 1929, Chapter 14717, Laws of Florida, Acts of 1931, and Chapter 17902, Laws of Florida, Acts of 1937, by reducing the acreage taxes pledged for the payment of bonds by Section 1560, Compiled General Laws of Florida, 1927, below the rates fixed by Chapter 9119, Acts of 1923 (the last Act under which original bonds were issued) and below the rates fixed by Chapter 10026, Acts of 1925, which said last Act was in force when refunding bonds were issued, from an aggregate of \$2,250,000.00 per year to approximately \$595,000.00 per year, did not impair the obligation of the contract of bonds of Everglades Drainage District, and the rights of holders thereof, in violation of Article I, Section 10 of the Constitution of the United States.

(11) In holding in effect that Chapter 14717, Laws of Florida, Acts of 1931, as amended by Chapter 17902, Laws of Florida, Acts of 1937, by splitting the acreage taxes and diverting and appropriating a portion of the proceeds of acreage taxes to purposes other than the payment of bond principal and interest in default since 1931, did not impair the obligation of the contract of bonds of Everglades Drainage District and the rights of holders thereof, in violation of Article I, Section 10 of the Constitution of the United States.

(12) In holding in effect that Chapter 14717, Laws of Florida, Acts of 1931, as amended by Chapter 17902, Laws of Florida, Acts of 1937, by making bonds and interest coupons, instead of cash, receivable in redemption of tax sale certificates, did not impair the obligation of the contract of bonds of Everglades Drainage District and the rights of holders thereof, in violation of Article I, Section 10 of the Constitution of the United States.

(13) In holding in effect that Chapter 14717, Laws of Florida, Acts of 1931, as amended by Chapter 17902, Laws of Florida, Acts of 1937, by authorizing the Board of Commissioners of Everglades Drainage District to cancel without payment certain acreage tax certificates did not impair the obligation of the contract of bonds of said District, and the rights of the holders thereof, in violation of Article I, Section 10 of the Constitution of the United States.

(14) In holding that the Supreme Court of Florida, in certain cases cited in said opinion, had decided the questions presented adversely to plaintiffs, particularly since Chapter 17902, Laws of Florida, Acts of 1937, under attack, had not been enacted at the time of the respective decisions in said cited cases, and since the said cited cases did not, nor did any other decision of said Supreme Court of Florida hold, in fact or in principal, that the features of Chapter 17902, aforesaid, under attack were valid as against objection [fol. 411] of bondholders thereto made in and by the second supplemental bill of complaint herein.

(15) In holding that State ex rel., Board of Commissioners v. Sholtz, 112 Fla. 756, Martin v. Dade Muck Land Co., 6 Fla. 530, State ex rel., Sherrill and Vann v. Milam, 113 Fla. 491, or any other Federal or Florida case, had decided anything that required the dismissal of the bill of complaint and supplemental bills of complaint, or the denial of the motions of plaintiffs for reinstatement of interlocutory injunction and for interlocutory injunction.

(16) In sustaining as valid against the attacks made upon Chapter 17902, Laws of Florida, Acts of 1937, by dismissing the second supplemental bill of complaint herein, said bill being duly supported by the oath of the plaintiff, H. C. Rick, and said bill alleging, without denial, that said Chapter 17902, Acts of 1937, reduced the acreage taxes to which bondholders were entitled to look for payment, from

an aggregate of \$2,250,000.00 to \$595,000.00, and that such latter aggregate was insufficient to pay principal and interest of bonds falling due annually, without paying anything on bonds or interest falling due prior to 1937, that said Chapter provided for the receipt of bonds and coupons at par in payment of acreage taxes and acreage tax redemptions, and gave authority to cancel and compromise acreage tax certificates without payment of anything, and further provided for the assessment of taxes at the rates fixed in said 1937 Act.

(17) In that it in effect sustained as valid the provisions of Chapter 14717, Laws of Florida, Acts of 1931, and Chapter 17902, Laws of Florida, Acts of 1937, authorizing the use of bonds and coupons in the redemption of acreage taxes and acreage tax certificates, and the cancellation of acreage tax certificates without any payment, notwithstanding that [fol. 412] the Supreme Court of Florida in *First State Savings Bank v. Little River Drainage District*, 122 Fla. 304, and the Circuit Court of Appeals for the Fifth Circuit in *Wall v. McNee*, 87 Federal (2) 763, had held void similar statutory provisions with respect to the bonds of another drainage district on principles clearly demonstrating the invalidity of the 1931 and 1937 Acts, aforesaid, in the respect attacked.

(18) In holding that, from an examination of the Florida cases herein cited, it appeared that the Supreme Court of Florida had passed upon the questions presented adversely to plaintiffs, and that the court was bound by the construction placed upon the involved statutes by the highest court of the state, because:

(a) Examination of the cited cases discloses that, so far from passing adversely to plaintiffs on the questions presented, the Supreme Court of Florida has determined that Chapter 10026, Laws of Florida, Acts of 1925, levying acreage taxes on lands in Everglades Drainage District to service its bonds, is a part of the contract of bondholders with the Board of Commissioners of the District; that such taxes are pledged and appropriated for the payment of such bonds, and may not by later legislation be reduced in amount so long as there are bonds outstanding for the payment of which the taxes are levied, appropriated and pledged. (*State ex rel. Sherrill and Vann v. Milam*, 113 Fla. 491.)

(b) Plaintiffs' second supplemental bill of complaint alleges, and the motion to dismiss admits, that Chapter 17902, Laws of Florida, Acts of 1937, purports to reduce substantially the amount of taxes levied for the payment of outstanding bonds, that defaults exist both as to principal and interest of the outstanding bonds, and that the taxes purported to be levied by said Chapter 17902, are insufficient to provide for the payment of the principal and interest of the outstanding bonds.

col. 413] (19) In holding that:

"* * * The Supreme Court of Florida has passed upon the questions presented to this court adverse to plaintiffs, and notwithstanding the decision in the Rorick case, 57 Fla. (2d) 1048, this court is bound by the construction placed upon these statutes by the highest court of the state * * *"

nce,

(a) The state court construction was favorable, rather than adverse, to plaintiffs; and, if bound by it at all, the District Court was bound to recognize that there was equity in the bill of complaint and the supplemental bills of complaint seeking relief from state impairment of contract obligations by later legislative acts of the very type held similarly invalid in decided cases; and said District Court was in error in dismissing the bills of complaint.

(b) If it were bound by such construction, the District Court, far from dismissing the bills of complaint, should have granted the application for interlocutory injunction against the enforcement of Chapter 17,902, Laws of Florida, Acts of 1937, purporting to reduce the amount of taxes levied by Chapter 10026, Laws of Florida, Acts of 1925, and pledged and appropriated for the payment of outstanding bonds, particularly in view of the allegations of the second supplemental bill of complaint, admitted by the motion to dismiss, that the taxes levied by said 1937 Act are substantially less in amount than those levied and pledged by said Act, and further in view of the holding of the Supreme Court of Florida that such 1925 taxes might not constitutionally be so reduced.

(c) There were presented questions as to whether, contrary to the provisions of Section 10 of Article I of the

Constitution of the United States, the obligation of the contract of plaintiff bondholders had not been, and was not then being, violated by later state legislation purporting [fol. 414] to lower pledged rates of taxation; and these were substantial Federal questions as to which the holding of the highest court of the state, even if adverse to plaintiffs, would not be binding on the District Court.

(d) The jurisdiction of the District Court was based not alone on diversity of citizenship of the parties, but also upon the substantial Federal question of the alleged impairment of the obligation of the contracts of the plaintiff bondholders with the Board of Commissioners of Everglades Drainage District by the enactment by the Florida Legislature of the subsequent Act, Chapter 17,902, Laws of Florida, Acts of 1937, in violation of Section 10 of Article I of the Constitution of the United States; and because the decisions of the Supreme Court of Florida, that is, *State ex rel Board of Commissioners v. Sholtz*, 112 Fla. 756, and *State ex rel. Sherrill and Vann v. Milam*, 113 Fla. 491, were made after the filing of the bill of complaint herein, and after the United States District Court herein had entered its order and decree of September 6, 1932, construing the statutes of the State of Florida, being among others Chapters 6456 of 1913, 9119 of 1923, and 10026 of 1925, on the former application for interlocutory injunction which was granted; and since the only difference between the decision of the Supreme Court of Florida and that of the United States District Court herein construing said statute in this respect is that the Supreme Court of Florida determined that the Act of 1925, Chapter 10026 aforesaid, is the Act which constitutes part of the bond contracts, and levies and appropriates the taxes for the payment of the bonds, *State ex rel. Sherrill and Vann v. Milam*, 113 Fla. 491, while said United States District Court had determined that the 1923 Act, Chapter 9119 aforesaid, is the Act which constitutes part of the bond contracts, and levies and appropriates taxes for the payment of the bonds; and since, further, [fol. 415] the amount of the taxes purporting to be levied by said Act of 1937 is substantially less than those levied either by the Act of 1923 or by the Act of 1925, and is less than sufficient to pay the principal and interest of the outstanding bonds, as alleged in the second supplemental bill of complaint herein, and admitted by defendants' motion to dismiss.

(20) In holding itself bound by state court construction as to the relation and duty, in the matter of taxes, of the Trustees of the Internal Improvement Fund with respect to land in the Everglades Drainage District bid off for the Trustees at tax sales, because:

(a) Prior to the decision (*State ex rel., Board of Commissioners v. Sholtz*, 112 Fla. 756) thought to effect the state court construction, the bill of complaint herein had been filed, and the decision of the District Court of the United States (*Rorick v. Board of Commissioners*, 57 Fed. (2) 1048) had been rendered, whereby the District Court herein made its own interpretation.

(b) The only parties to the mandamus proceeding in the Florida Supreme Court (*State ex rel., Board of Commissioners v. Sholtz*, *supra*) thought to effect the state court construction, were the Board of Commissioners of Everglades Drainage District, as relator, and the said Trustees of the Internal Improvement Fund, as respondents. And, at the time said mandamus proceeding was instituted, both said relator and said respondents had as defendants herein filed their answers to the bill of complaint and supplemental bills of complaint herein, taking in said answers substantially the same position as to the relation and the duty of the Trustees in respect of the bid-off and certificated lands as that later adopted in said state court mandamus proceeding, the state court merely accepting the only position in this respect which the parties had taken in said mandamus [fol. 416] proceeding, and there being, therefore, no actual controversy presented to said state court in the case thought to effect the state court construction.

(c) So much of the doctrine of *Erie Railroad Co. v. Tompkins*, 82 Law Ed. 787, as requires United States Courts in certain situations to accept state court construction is here inapplicable, as the jurisdiction of the United States District Court herein was based not alone on diversity of citizenship of the parties, but on a substantial Federal question, namely, the alleged impairment of the obligation of the bond contracts, in violation of Article I, Section 10 of the Constitution of the United States, and the United States District Court herein in substance reversed its position in respect of the aforesaid relation and duty of said Trustees

in respect of such bid-off and certificated lands, which was part of the obligation of the bond contracts; and did so reverse itself by erroneously interpreting and applying the doctrine of *Erie Railroad Co. v. Tompkins*, supra, to a state court decision made by the state court under the foregoing circumstances.

(21) In its statement:

“ * * * It appears that the Supreme Court of Florida has passed upon the question presented to this court adverse to the plaintiffs * * * ”

for the reason that the statement is substantially erroneous and inaccurate in that the Florida Supreme Court has determined that Acts of the Legislature of 1929 and 1931 of that State enacted after the outstanding bonds of Everglades Drainage District were issued and sold, which Acts purported to reduce the amount of the taxes levied in the Act of 1925, Chapter 10026 of the Laws of Florida, for the payment of bonds, and which were appropriated for that purpose, impaired the obligation of the bond contracts between the Board of Commissioners of the District and the holders of the outstanding bonds, but said court has not [fol. 417] purported to pass specifically upon the validity of the Act of 1937, Chapter 17902, Laws of Florida, Acts of 1937, or to enjoin its enforcement; and in that an application was made to the United States District Court herein for a rehearing for the purpose, among others, of correcting said erroneous statement, and said application was denied; the foregoing erroneous statement is substantially prejudicial to the interests of the plaintiffs herein in that it gives the impression that the United States District Court herein by its opinion is purporting to construe, erroneously, the decision of the Supreme Court of Florida, and the Board of Commissioners of Everglades Drainage District, and the Tax Assessors and Tax Collectors of the counties embraced within said District, whose duty it is to enter the proper taxes on the tax rolls and to collect the same, are, by virtue of the erroneous statement aforesaid of the United States District Court in its opinion herein as to their duties in respect of the entry and collection of the taxes, misinformed and may be misled into thinking that they are authorized to perform said duties pursuant to the statutes of the State of

Florida, including said Chapter 17902, which violates the obligation of the contracts of bondholders.

(22) In stating:

“ * * * This court is bound by the construction placed upon these statutes by the highest court of the state * * * ”

for the further reasons that the Legislature of the State of Florida enacted a series of statutes upon the application of the Board of Commissioners of Everglades Drainage District, the purpose and effect of which statutes was to impair the obligation of the bond contracts between the Board of Commissioners of Everglades Drainage District, and the holders of the outstanding bonds of said District, including [Vol. 418] the plaintiffs herein, the first of said Acts being enacted in the year 1929 and being Chapter 13633, Laws of Florida, Acts of 1929, the second of said Acts being enacted in the year 1931, and being Chapter 14717, Laws of Florida, Acts of 1931, and the third of said Acts being enacted in the year 1937, and being Chapter 17902, Laws of Florida, Acts of 1937, the said Act of 1937 having been enacted upon the application of the Board of Commissioners of said District after the decision of the United States District Court herein on the former application for interlocutory injunction against the enforcement of said Acts of 1929 and 1931, *Rorick v. Board of Commissioners*, 57 Fed. (2) 1048, and in that the Supreme Court of the State of Florida has not passed upon the validity of the Act of 1937, nor has it issued an injunction restraining the enforcement thereof. Notwithstanding the decision of the United States District Court herein, *Rorick v. Board of Commissioners*, supra, and of the Supreme Court of the State of Florida, *State ex rel., Sherrill and Vann v. Milam*, 113 Fla: 491, the Act of 1937, Chapter 17902, Laws of Florida, Acts of 1937, was enacted by the Legislature of the State of Florida for the purpose of imposing duties upon the assessors of taxes in counties lying within Everglades Drainage District to enter the taxes levied therein upon their tax rolls, and upon the tax collectors of said counties to collect the same, at the substantially reduced rates provided in the said Act of 1937. To prevent such action an interlocutory injunction by the United States District Court herein was required by plaintiffs and was prayed for and applied for herein.

II

Parts of the Record Thought Necessary for the Consideration of the Foregoing Points

The appellants think the whole of the record from the [fol. 419] court below is necessary for the consideration of the foregoing points, and request and designate the whole thereof to be printed.

William Roberts, William H. Watson, Samuel Pasco, Watson & Pasco & Brown, Solicitors for Appellants.

Due service of the foregoing statement of points and designation of parts of the record to be printed is hereby acknowledged.

This 29 day of December, 1938.

Fred H. Kent, Kent, Kassewitz, Wheeler & Ormschaw, Solicitors for Appellees, Other Than Trustees of Internal Improvement Fund of the State of Florida. Geo. Couper Gibbs, Atty. General; W. P. Allen, Asst. Atty. Gen.; M. C. McIntosh, Asst. Atty. Gen., Solicitors for Appellees as and Constituting Trustees of Internal Improvement Fund of the State of Florida.

[fol. 420] [File endorsement omitted.]

Endorsed on cover: Enter William Roberts. File No. 43,039. N. Florida, D. C. U. S. Term No. 554. H. C. Rorick, Joseph R. Grundy, and J. R. Easton, appellants, vs. Board of Commissioners of Everglades Drainage District, etc., et al. Filed December 31, 1938. Term No. 554, O. T., 1938.

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

439

38-66



lera-

i the
on of
hole

asco,
ppel-

and
reby

ren-
rus-
te of
V. P.
Atty.
iting
the

No.
rick,
oard
etc.,
938.

FILE COPY

SUPREME COURT OF THE UNITED STATES

RECEIVED

NO. 554

H. C. ROHICK, JOSEPH E. BRUNDY and J. R. EASTON,
Appellants,

BOARD OF COMMISSIONERS OF EVERGLADES
DRAINAGE DISTRICT, etc., et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF FLORIDA.

STATEMENT AS TO JURISDICTION.

W. H. WATSON,
SAMUEL PARCO,
Counsel for Appellants.

INDEX.

SUBJECT INDEX.

	Page
Statement as to jurisdiction	1
Statutory provisions believed to sustain the jurisdiction	1
The decree sought to be reviewed	2
Statutes of the State of Florida the validity of which is involved	2
Nature of the case and rulings below	18
Matters in which it is claimed the court abused its discretion in denying interlocutory injunction	31
Cases sustaining jurisdiction	32
Exhibit "A"—Opinion of the District Court of the United States for the Northern District of Florida of April 13, 1932	34
Exhibit "B"—Opinion of the District Court of the United States for the Northern District of Florida of August 2, 1938	64

TABLE OF CASES CITED.

<i>Erie R. R. Co. v. Tompkins</i> , 82 L. Ed. 787	24
<i>Interstate Busses Corp. v. Blodgett</i> , 276 U. S. 245	32
<i>Polk Co. et al. v. Glover, County Solicitor, et al.</i> (No. 29, October Term, 1938, decided November 7, 1938)	32
<i>Spielman Motor Sales Co. v. Dodge</i> , 295 U. S. 89	32
<i>State ex rel. Sherrill and Vann v. Millam</i> , 113 Fla. 491	31
<i>Sterling v. Constantin</i> , 287 U. S. 378	32
<i>Stratton v. St. Louis Southwestern Ry. Co.</i> , 282 U. S. 10	32
<i>Suncrest Lumber Co. v. North Carolina Public Park Commission</i> , 29 F. (2d) 823	32

STATUTES CITED.

Act of Congress of September 28, 1850, United States Statutes at Large, Vol. 9, page 519	21
--	----

	Page
Acts of the Florida Legislature of 1923, Chapter 9119	31
Acts of the Florida Legislature of 1925, Chapters 10026 and 10027 (Vol. 1, pp. 14, et seq., and pp. 41, et seq.)	27, 31
Acts of the Florida Legislature of 1929, Chapter 13711, Vol. 1, p. 386	8
Constitution of the United States, Article I, Section 10	2
Everglades Drainage District Statute, Chapter 6456, Acts of 1913, Laws of Florida, Vol. 1, p. 129, as amended (Revised General Statutes of Florida of 1920, as Article 4, Division 1, Title 7, Sections 1160 to 1188, inclusive, pages 702 to 749, inclusive):	3
Section 1160	3
Section 1161	3, 8
Section 1162	3
Section 1163	3
Section 1164, as amended by Chapter 7862, Acts of 1919, p. 154, Vol. 1; 8413, Acts of 1921, p. 64, Vol. 1; 9119, Act of 1923, p. 9, Vol. 1, and 10026, Acts of 1925, p. 14, Vol. 1, Laws of Florida	4
Section 1165	4
Section 1167	4
Section 1171	4
Section 1172	4
Section 1175	4
Section 1176	4, 5
Section 1178, as amended by Chapters 8413, Acts of 1921, 9119, Acts of 1923, and 10026, Acts of 1925, Laws of Florida	4, 5, 6, 7
Section 1179	5
Section 1180	5
Section 1181	5
Section 1182	5, 6
Section 1183	4, 6
Section 1184	6
Judicial Code, Section 238 (28 U. S. C. A. 345)	2
Section 266 (28 U. S. C. A. 380)	2
Laws of Florida of 1855, Chapter 610	19, 21

Laws of Florida of 1929, Chapter 13633 (Laws of Florida of 1929, General Laws, Vol. 1, p. 146), Section 1, amending Section 1161 of the Revised General Statutes of Florida (1920)	2, 8, 19, 28, 30
Section 6, pages 149 to 151 (adopting the rezoning of the lands of the District made by Chapter 12017, Laws of Florida, Acts of 1927, Vol. 2, p. 593)	8
Section 26, pages 159 and 160	9
Section 36, page 163	9
Laws of Florida of 1931, Chapter 14717, reported in official edition, Laws of Florida, 1931, General Laws, Vol. 1, p. 194:	2, 3, 19, 27, 28
Section 2(a), page 202	9
Section 2(f)	9
Section 5, pages 209 to 230	9
Section 6, page 230	9
Section 7, pages 231 and 232	10
Section 8, pages 232 and 233	10
Section 9, pages 234 and 236	11
Section 43, pages 256 and 257	11
Section 44, page 257	12
Section 48, page 259	12
Section 50, page 261	12
Section 52, page 262	12
Section 56(c), page 265	12
Section 59, page 267	12
Section 60, pages 268 and 269	12
Section 61, page 269	12
Section 63, page 272	12
Section 65	25
Section 65(a), page 273	12
Section 65(b)	13
Section 65(e), page 275	13
Section 67(a), page 277	13
Section 67(b), page 277	14
Section 67(c), page 277	14
Section 67(d), page 277	14
Section 70(a), page 281	14

Section 71, page 284	14
Section 104, page 305	14
Laws of Florida of 1937, Chapter 17902, reported in official edition, Laws of Florida of 1937, General Laws, Vol. 1, p. 370	3, 14, 19, 26, 29
Section 1, pages 371 and 372	15
Section 1(i)	15
Section 2, page 374, amending Section 5 of the 1931 Act	15
Section 3, page 391	15
Section 4, page 392	16
Section 5, page 393	16
Sections 6 and 7, page 394, amending Sections 53 and 54 of the 1931 Act	16
Section 9, page 395	16
Section 10, page 395	17
Section 11, page 396	17
Section 12, page 396	18
Section 17, page 397	18

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 554

H. C. RORICK, JOSEPH B. GRUNDY AND J. R. EASTON,
vs. *Appellants,*

**BOARD OF COMMISSIONERS OF EVERGLADES
DRAINAGE DISTRICT, ETC., ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF FLORIDA.**

STATEMENT OF JURISDICTION.

Statement, pursuant to paragraph 1 of Rule 12 of the Rules of the Supreme Court of the United States, of the jurisdiction of the Supreme Court of the United States to review upon appeal the above entitled cause:

(a) The Statutory Provisions Believed to Sustain the Jurisdiction.

To sustain the jurisdiction of the Supreme Court of the United States to review the above entitled cause upon ap-

peal, appellants rely upon Sections 238 and 266 of the Judicial Code, as amended (28 U. S. C. A., Sections 345, 380), and upon the decree herein as a final decree denying an injunction in a suit to restrain the enforcement, operation or execution of State statutes of the State of Florida, to wit: Chapter 14717 of the Laws of Florida of 1931 and Chapter 17902 of the Laws of Florida of 1937, by restraining the action of officers of such State in the enforcement or execution of such statutes, and dismissing the bill and supplemental bills, the validity of the State statutes being attacked upon the ground that they impair the obligation of a contract between the Board of Commissioners of Everglades Drainage District and plaintiffs herein as holders of its outstanding bonds in violation of Article I, Section 10, of the Constitution of the United States.

(b) The Decree Sought to be Reviewed.

The decree appealed from is dated August 2, 1938, and was entered and filed of record August 4, 1938. The date upon which the petition for appeal was presented was November 22, 1938.

The decree was one pronounced by a specially constituted District Court of three judges convened to hear an application for an interlocutory injunction, and upon such hearing the Court by the decree appealed from denied the application and dismissed the bill and supplemental bills, of complaint.

(c) The Statutes of the State of Florida, the Validity of Which is Involved on This Appeal.

Act of the Legislature of the State of Florida of the year 1929, being Chapter 13633 of the Laws of Florida of 1929, reported in official edition, Laws of Florida, 1929, General Laws, Vol. 1, p. 146.

Act of the Legislature of the State of Florida of the year 1931, being Chapter 14717 of the Laws of Florida of 1931, reported in official edition, Laws of Florida, 1931, General Laws, Vol. 1, p. 194.

Acts of the Legislature of the State of Florida of the year 1937, being Chapter 17902 of the Laws of Florida of 1937, reported in official edition, Laws of Florida, 1937, General Laws, Vol. 1, p. 370.

A summary of the pertinent provisions of these statutes follows:

In order to lay the foundation for the Court's understanding of the following summary of the statutes which it is claimed impaired the obligation of the bond contract, we first set forth briefly a summary of the original Everglades Drainage District Statute, Chapter 6456, Acts of 1913, Laws of Florida, Vol. 1, p. 129, as amended during the time when the bonds of the District were authorized to be issued and were issued, which defines the obligation of the bondholders' contract. As amended from time to time down to and including the year 1919, the Everglades Statute was re-enacted in the Revised General Statutes of Florida, of 1920, as Article 4, Division 1, Title 7, Sections 1160 to 1188, inclusive, pages 702 to 749, inclusive.

Section 1160 created the District and defined its boundaries. Section 1161 constituted as the governing board the Governor, the Comptroller, the State Treasurer, the Attorney General, and the Commissioner of Agriculture of the State of Florida, and their successors in office, the same five state officials who are trustees of the Internal Improvement Fund with all the powers of a body corporate, including the power to sue and be sued, and to borrow money, while Section 1162 defined their powers as to the necessary work of draining and reclaiming the lands of the District, and Section 1163 gave the Board the power of eminent do-

main. Section 1164 imposed and levied annual drainage taxes on the lands in the District, and said section at page 730, provided that the lands within said District held by the Trustees of the Internal Improvement Fund shall be subject to the taxes thereby imposed, and the said Trustees in furtherance of the trust upon which the said lands were held, were thereby authorized and empowered to pay the same out of any funds in their possession derived from the sale of lands or otherwise. The taxes under this Section 1164 were progressively increased by Chapters 7862, Acts of 1919, p. 154, Vol. 1; 8413, Acts of 1921, p. 64, Vol. 1; 9119, Acts of 1923, p. 9, Vol. 1; and 10026, Acts of 1925, p. 14, Vol. 1, Laws of Florida, which Acts also increased the amount of bonds which might be issued under Section 19 of the original Act or Section 1178 of the Revised General Statutes, its codification, as amended in 1919. Section 1165 of the Revised General Statutes defined generally the use to be made of the proceeds of the acreage tax so as to include the repayment of loans and the creation of a sinking fund for the payment of bonds and interest. From these acreage taxes the specific appropriation in Section 1183 for the payment of bonds was made. Sections 1167 and 1176, inclusive, provided the method of assessing taxes, their collection, sales for non-payment, and the time and method of redemption of tax certificates and obtaining tax deeds for lands sold for non-payment of taxes. By Section 1171 in force at the time of the issuance of all bonds now outstanding tax collectors were required at tax sales where there were no bidders for a parcel of land to bid it off for the Trustees of the Internal Improvement Fund who were to hold it during the period allowed for redemption in like manner and with like effect as land sold to the State for non-payment of State and county taxes while Section 1172 required immediate payment by purchasers at tax sales. By Section 1175 the tax certificates for lands bid off to the

Trustees of the Internal Improvement Fund were issued to them, and the title to unredeemed lands vested in them at the expiration of two years from the date of each certificate. They were empowered by the Section to sell and convey such lands at the best obtainable price, not less than the amount of all drainage taxes which should have become due and payable, and it was declared that the "proceeds of the sales of said lands shall be applied by the said Trustees in the payment of drainage taxes or assessments or other obligations of said trustees". By Section 1176 the redemption moneys for tax certificates held by said Trustees were remitted to them, and if any deed issued by them should be invalid because of either of the two reasons given by the statute (namely that the land was not liable for the tax or the tax had been paid at the time of the sale by the Trustees), they were required to refund the purchaser "the amount of drainage taxes received in connection therewith with interest at 6% per annum."

Sections 1178 to 1182, inclusive, define the power of the Board to issue bonds, their denominations, rate of interest, place of payment, method of execution and certification, and conversion into registered bonds, and the rights of bondholders. By Section 1178, as amended by Chapters 8413, Acts of 1921, 9119, Acts of 1923, and 10026, Acts of 1925, Laws of Florida, above referred to in connection with Section 1164 (the tax levying section), the power to issue bonds was given and the amount to be outstanding at any time was limited with a reservation of power in the Legislature to authorize additional bonds payable from drainage taxes, each additional authorization to be accompanied by the levy and imposition of additional taxes sufficient to meet the payment of the bonds authorized and the interest thereon. The method followed with respect to each additional authorization of bonds after Chapter 6456, Acts of 1913, was to amend Section 5 of that Act or Section 1164 of the Revised Gen-

eral Statutes, its re-enactment, as amended, so as to increase the tax rates imposed. This Section 1178 made the additional bonds of equal dignity with the bonds theretofore authorized, and made them equally entitled to payment from all drainage taxes without preference to any bonds or series of bonds over any other. Section 1182, never amended, declared the legislation to be full authority for the issuance of the bonds and that the provisions of the Article (Act) should constitute an irrevocable contract between the Board and District and the holders of any bonds or the coupons thereof, and empowered any holder at law or in equity by suit, action, or mandamus to enforce and compel the performance of the duties required of any officers or persons in relation to the bonds or the collection, enforcement, and application of the taxes for the payment thereof.

Section 1184 constituted the State Treasurer custodian of all funds of the Board or District, and Section 1183 made it the duty of the State Treasurer, or his successor in office, as custodian of the funds, out of the proceeds of the taxes levied and imposed, or any other moneys of the Board or District in his possession, to apply such moneys and to pay the interest and principal of the bonds, it being declared that:

“which moneys so far as necessary are hereby set apart and appropriated for the purpose.”

The entire section reads as follows:

“It shall be the duty of the State Treasurer or his successor in office, as custodian of the funds belonging to the said Board of Commissioners and to the said Drainage District, out of the proceeds of the taxes levied and imposed by this Article and out of any other moneys in his possession belonging to the said Board or to the said Drainage District, which moneys so far as necessary are hereby set apart and appropriated for the purpose, to apply said moneys and to pay the in-

terest upon the said bonds as the same shall fall due and at the maturity of the said bonds out of the said moneys to pay the principal thereof; and there shall be and there is hereby created a sinking fund for the payment of the principal of the said bonds, and the said Board shall set apart and pay into such sinking fund annually out of the taxes levied and imposed by this Article, and the other revenue and funds of the said District, at least two per cent of the amount of bonds outstanding. The said sinking fund for the payment of the principal of said bonds shall not be appropriated to any other purpose than that herein specified."

All the bonds now outstanding were issued prior to the Acts of 1929, 1931, and 1937 attacked by the pleadings, the last original bonds being issued pursuant to a contract for their purchase dated February 27, 1925, when Chapter 9119, Acts of 1923, was in effect, and the refunding bonds of 1925 being issued pursuant to a contract for their purchase, dated June 15, 1925, after Chapter 10026, Acts of 1925, became effective. Part of the aggregate bonds now outstanding were issued in each of the years 1920, 1921, 1922, 1923 and 1925, the last issued being the refunding bonds dated July 1, 1925. The rates and amounts of acreage taxes under the 1923 and 1925 Acts appropriated, so far as necessary, to the payment of bonds and interest were, as alleged in the pleadings, greater than the rates and amounts of acreage taxes set apart for the payment of bonds by the Acts attacked. None of the provisions of law in force when said bonds were issued authorized the payment of taxes or the redemption of tax certificates with anything but money, and none authorized the cancellation of taxes or certificates without such payment. None made the Trustees of the Internal Improvement Fund the holders of lands or tax certificates in trust for the Board of Commissioners. The State Treasurer was the only custodian of funds of the District

under such laws, and the five principal State Officers who constitute the Trustees of the Internal Improvement Fund, namely, the Governor, the Comptroller, the State Treasurer, the Attorney General, and the Commissioner of Agriculture of the State of Florida, and their successors in office, were constituted the Board of Commissioners under the original Everglades Drainage District Statute, Chapter 6456 of the Acts of 1913, and under all the aforesaid amendments of that statute made when bonds of the District were being sold.

The pertinent provisions of Chapter 13633, Laws of Florida, Acts of 1929, Vol. 1, p. 146, involved in this case are summarized as follows:

Section 1, pages 146 and 147 amended Section 1161 of the Revised General Statutes of Florida (1920), so that the Board of Commissioners of Everglades Drainage District should be composed of the Governor, the Attorney General, the Comptroller, the Commissioner of Agriculture, and the State Treasurer, and their successors in office, and five persons to be appointed by the Governor, who were required to be land-owners in the District, citizens of Florida, and bona fide residents of some county wholly or partially in the District.

Section 6, pages 149 to 151, adopted the re-zoning of the lands of the District, made by Chapter 12,017, Laws of Florida, Acts of 1927, Vol. 2, p. 593, and levied taxes at reduced rates and empowered the Board to reduce the taxes in each of the zones proportionately to the extent of not more than 25% of the taxes levied by the Section, and from time to time to re-adjust such levies. It also provided that there should be deducted from the taxes as to each acre an amount equal to the tax levied against same by the Act creating Okeechobee Flood Control District, which is Chapter 13711, Laws of Florida, Acts of 1929, Vol. 1, p. 386.

Section 26, pages 159 and 160, authorized the Board for the purpose of funding, retiring, and paying obligations not evidenced by bonds, to issue and sell bonds in an amount not exceeding \$3,000,000.00, but the Act did not levy additional taxes for the payment of such bonds.

Section 36, page 163, provided that all laws or parts of laws in conflict therewith were thereby repealed.

The pertinent provisions of Chapter 14717, Laws of Florida, Acts of 1931, Vol. 1, p. 194, involved in this case, are summarized as follows:

Section 2(a), page 202, made the governing board of the District to consist of five landowners within the District, of whom should be citizens of the State of Florida, and residents of counties wholly or partly in the District. Section 2(f) required the headquarters of the District to be in a county wholly or partly within the District.

Section 5, pages 209 to 230, divided the lands of the District into eight zones for the purpose of levying and imposing the taxes and special assessments levied and imposed by the Act, and Section 6, page 230, provided that:

“The taxes and special assessments in this Act levied and authorized to be levied shall be used solely and exclusively for the several uses, purposes, and objects specified in the statute with respect to the several such taxes and special assessments.”

Sections 7 and 8 levied acreage taxes upon certain lands in the District at the rates fixed in the statute, part of the acreage taxes levied being designated a “Debt Service Tax” on the proceeds of which all obligations of the District were to be paid including obligations other than bonds, and not being designated together with other taxes as “Administration Tax” for the payment of general administrative expenses of the District.

Section 7, pages 231 and 232, provided:

"That for the purpose of enabling the Board to pay the principal and interest of all obligations of Everglades Drainage District heretofore incurred and now outstanding, there are hereby levied and imposed within Everglades Drainage District the following special taxes or assessments, which shall be known and designated as the 'Debt Service Tax': * * *"

The Section then levied on the several zones annually taxes ranging from 49¢ per acre in zone 1, to 1¾¢ per acre in zone 8, as the Debt Service Tax for all outstanding obligations of the District, and not merely bond obligations. (Note: The annual tax under Chapter 9119, Acts of 1923, ranged from maximum annual tax of 92¢ per acre to 10¢ per acre, and the annual tax under Chapter 10026, Acts of 1925, ranged from a maximum of \$1.50 per acre or \$1.50 per town lot for zone 1, to a minimum of 80¢ per acre or per town lot for zone 5. The Act of 1923 was in force when the last outstanding original bonds were issued, and the Act of 1925 was in force when the outstanding refunding bonds were issued.)

Section 8, pages 232 and 233, provided:

"That for the purpose of paying cost of administering the affairs of the said District generally, there is hereby levied and imposed upon lands within Everglades Drainage District a special tax or assessment as follows: * * *"

It then levied on the several zones annually taxes ranging from a maximum of 21¢ per acre for zone 1 to ¾¢ per acre for zone 8. The Section also levied an annual ad valorem tax of one mill per dollar of valuation upon all real and personal property in the District, and denominated the taxes levied and imposed by the Section as the administration tax.

Section 9, pages 234 to 236, authorized the division by the Board of the lands of the District into maintenance areas, the adoption of an annual maintenance budget, and by paragraph (e) authorized the Board to levy each year a maintenance tax on each area of not exceeding 50¢ per acre, which it was provided "shall be used only for the purpose of maintaining and operating those works, the maintenance and operation of which are shown by the budget to be beneficial to such maintenance area."

Section 43, pages 256 and 257, established for the District the following funds:

(1) Administration Fund into which it was declared should be paid the proceeds of the administration tax levied by the Act.

(2) Debt Service Fund into which it was declared should be paid the proceeds of the debt service tax levied by the Act, the proceeds of the conversion into money of all the tax sale certificates and/or lands which should be received by the Board of Commissioners from the Trustees of the Internal Improvement Fund under the provisions of the Act, and all moneys which should be received by the Board after November 1, 1931, from redemptions and/or sale of lands sold for the non-payment of taxes for the year 1930.

(3) Maintenance Fund into which it was declared should be paid the proceeds of the maintenance tax levied under the Act for the purpose of maintaining and preserving the works theretofore constructed by the District.

The last mentioned Section also empowered the Board to borrow for the account of the administration fund and for the account of the maintenance tax fund, severally, and to pledge the administration tax for the payment of loans for account of the administration fund, and the maintenance

tax for the payment of loans for the account of the maintenance fund.

Section 44, page 257, confined the use of the administration fund to administration expenses, the debt service fund to the payment of the principal and interest of all bonds and obligations then owing by the District, and to bonds and notes or refunding bonds which should be issued for the purpose of funding or refunding any existing obligations, and the maintenance fund to the maintenance work.

Section 48, page 259, provided for annual assessment rolls with the several taxes in separate columns.

Section 50, page 261, and Section 52, page 262, provided for transmission of assessment rolls to tax assessors and defined their duties.

Section 56(c), page 265, provided the method of tax sales by collectors and that where there were no bidders for a tract, the tax collector should bid it off for the Board of Commissioners, (Note: The legislation in force when outstanding bonds were issued required any such tract to be bid off for the Trustees of the Internal Improvement Fund) and Section 59, page 267, made the report of sales, without the issuance of any certificate, conclusive evidence of the sale to the Board and of its lien. Section 60, pages 268 and 269, gave two years for redemption from tax sales, and required the redemption money for lands bid off for the Board to be remitted to the Treasurer of the District, while Section 61, page 269, authorized the sale of the lien of the Board for lands bid off to it, the proceeds to be remitted to the Treasurer of the District. By Section 63, page 272, it was provided that title to lands bid off to the Board for non-payment of taxes and not redeemed within two years from date of sale should vest in the Board.

By Section 65(a), page 273, it was declared that all tax sale certificates for Everglades taxes, whether evidencing

a lien or title to the lands held by the Trustees of the Internal Improvement Fund were held in trust for the Board of Commissioners, and that the beneficial interest and title was vested in such Board, subject to the right of the Trustees to be repaid by the District any sums of money advanced by the Trustees for the account of the District. Paragraph (b) of the Section provided that within 90 days after the Act became effective, or as soon thereafter as practicable, said Trustees should assign, transfer, and deliver to the Board all such tax sale certificates, and that all the title of said Trustees under such certificates should vest in the Board; that any indebtedness of the District to the Trustees should be adjusted at the time of the transfer in such manner as should be agreed on, and might be paid in whole or in part by the Board relinquishing its right in certain certificates to be agreed on; that any balance owing to the Trustees after credit for any certificates retained by them should be evidenced by certificates of indebtedness of the Board to the Trustees in denominations of not less than \$1,000.00, and that such certificates should be receivable in payment of District taxes on lands then or thereafter held by the Trustees, and the Board should not be required to pay the certificates in any other manner than by receiving them in payment of taxes by the Trustees, or by any purchaser of the lands from the Trustees. Paragraph (e) of the Section, page 275, as to certificates retained by the Trustees and not redeemed, vested fee simple title to the lands in the Trustees and made them part of the Internal Improvement Fund of the State of Florida.

By Section 67(a), page 277, it was provided that any lands covered by tax sale certificates transferred to the Board of Commissioners by the Trustees of the Internal Improvement Fund might be sold at the best obtainable price, and that the Board might accept payment of all or

part of the price in bonds or matured interest coupons to the District at par.

By Section 67(b), (c), and (d), page 277, it was provided that any lands as to which the Board might acquire by virtue of tax sales thereafter made, might be sold for the best price obtainable, but not less than unpaid taxes, interest, penalties, and costs and charges; that all sales should be for cash or upon terms, but deeds should be given only upon payment of the price; that the Board should not sell more than 80 acres in a contiguous body without notice of intention to sell by publication, and any sale pursuant to publication should be for the best bid, subject to the limitations of the Act as to the amount for which the Board might sell.

Section 70(a), page 281, provided that the Board by resolution might authorize the issuance of bonds for the purpose of refunding bonds, notes, certificates of indebtedness or other obligations then outstanding for the payment of which the credit of the District was pledged, but did not levy any additional taxes for paying such bonds and interest.

Section 71, page 284, provided that in the redemption of tax sale certificates transferred to the Board under the Act and in the redemption of lands sold to the Board for nonpayment of taxes for 1930, the person redeeming should have the right to pay in bonds and matured interest coupons at par in lieu of cash.

Section 104, page 305, provided that all laws or parts of laws in conflict therewith were thereby repealed.

The pertinent provisions of Chapter 17902, Laws of Florida, Acts of 1937, Vol. 1, page 370, involved in this case are summarized as follows:

This Act is amendatory of Chapter 14717, Laws of Florida, Acts of 1931, as amended, which the title of the 1931 Act states was a "Revision of All Laws Relating to Ever-

glades Drainage District", and changes the zones of the District and levies taxes upon the lands according to the changed zones, provides for the collection of the taxes, for the cancellation of certain taxes and tax levies, and cancellation of assessments against lands afterward acquired by the Federal Government for park and recreational purposes and exempts such lands from future taxes.

Section 1, page 371, amending Section 2(a) of the 1931 Act, made the governing board of the District to consist of five persons to be appointed by the Governor possessing the qualifications therein defined.

Said Section 1, page 372, amending Section 2(h) of the 1931 Act required the Board of Commissioners to appoint a suitable person as Treasurer of the District, and made him custodian of the moneys and securities of the District. Paragraph (i) of said Section, page 373, required the Board to employ a Secretary and provided that the same person might be Secretary and Treasurer; that the salary of the Secretary should not exceed \$200.00 per month, but that the Board might allow him additional compensation as Treasurer in the event of his appointment to both offices.

Section 2, page 374, amended Section 5 of the 1931 Act, so as to divide the lands of the District into five zones, instead of eight zones, for the purpose of the Act and the levying of taxes.

Section 3, page 391, amended Section 7 of the 1931 Act to provide:

"That for the purpose of enabling the Board to pay the principal and interest of all obligations of Everglades Drainage District heretofore incurred and now outstanding and any refunding bonds hereafter issued, there are hereby levied and imposed within Everglades Drainage District the following special taxes or assessments, which shall be known and designated as the 'Debt Service Tax': * * *",

and then levied for the year 1937 and each year thereafter 90¢ per acre on lands in Zone One, 55¢ per acre in Zone Two; 30¢ per acre in Zone Three; 10¢ per acre in Zone Four; and 3¢ per acre in Zone Five; and also on platted town lots of one-fourth of an acre or less in Zones One, Two, Three and Four 20¢ per lot, and upon such lots in Zone Five 3¢ per acre, which in effect very substantially reduced the rates and amounts of acreage taxes levied by prior statutes for the payment of the bonds of the District. (See note under summary of Section 7 of the 1931 Act, ante.)

Section 4, page 392, amended Section 8 of the 1931 Act to provide:

“That for the purpose of paying the cost of administering the affairs of the said District generally, there is hereby levied and imposed upon lands within Everglades Drainage District a special tax or assessment as follows: * * *”

For the year 1937 and each year thereafter it levied upon lands in Zone One 10¢ per acre; in Zone Two 5¢ per acre; in Zone Three 3¢ per acre; and in Zone Four 2¢ per acre. The Section also levied an annual *ad valorem* tax of one mill per dollar of valuation upon all real and personal property in the District, and declared the taxes levied should be known as the administration tax.

Section 5, page 393, amended Section 52 of the Act of 1931 in respect of the duty of tax assessors as to tax lists and rates under the Act.

Sections 6 and 7, page 394, amended Sections 53 and 54 of the 1931 Act as to the duties of tax collectors.

Section 9, page 395, provided:

“In connection with the effectuation and consummation of any compromise, refinancing or refunding of the indebtedness of said Everglades Drainage District, the Board of Commissioners is hereby authorized and em-

powered to compromise, adjust, or cancel, without payment, any and all Everglades Drainage District taxes and liens now outstanding against the lands within said District levied by the laws of the State of Florida for the year 1936 and prior years, and held and owned by the Board of Commissioners of Everglades Drainage District, by proper resolution of said Board setting forth the manner and terms upon which said compromise, adjustment, or cancellation has been or will be made, and providing for the means and manner of clearing the records as to such liens under the provisions of this Act.

"The Board of Commissioners and the Trustees of the Internal Improvement Fund of Florida are hereby given authority to enter into such agreements and make such settlements between them as, in the discretion of said two Boards, may seem just and expedient in the consummation of any such debt refunding or adjustment plans negotiated by said Board of Commissioners."

Section 10, page 395, provides:

"That in the event any of the lands described in the above zones shall be or become the property of the United States Government, or under the control, management, and maintenance of the United States Government, the Board of Commissioners is hereby authorized and empowered by resolution of the Board to cancel any and all liens and assessments against such property and to exempt said lands from future Everglades Drainage District taxes and assessments, so long as said lands may remain the property or under the control of the United States Government."

Section 11, page 396, provides:

"That the Board of Commissioners shall have the power and authority, from time to time, to provide by resolution that the time within which tax sale certifi-

cates or other tax liens representing taxes levied for the year 1936, or any prior year, held by such Board, may be redeemed, shall be extended for a total period not to exceed two years from the date that this Act becomes a law, and such redemption may be made within the period of time fixed by such Board by the payment of the principal amount of taxes evidenced by any such tax sale certificate or secured by any such tax lien plus interest thereon, at the rate of eight per centum (8%) per annum, from the date upon which such tax sale certificate was issued or such tax lien became evidenced."

Section 12, page 396, provides:

"That in the payment or redemption of any tax sale certificate or tax lien representing taxes levied for the year 1936, or any prior years, held by the Board, bonds and/or matured interest coupons or other obligations of such drainage district shall be receivable at par, and in lieu of money in payment of the sum of money required to be paid in effecting such redemption, except that so much or any part of such sum of money required to be paid as is applicable under the law primarily or solely to maintenance of the works and improvements of the district or to the administration of its affairs shall be payable solely in cash. The fees of public officers chargeable by law in connection with any such redemption shall be paid in cash."

Section 17, page 397, provided that all laws or parts of laws in conflict therewith are thereby repealed.

(d) Nature of the Case and Rulings of the Court Upon which it is Relied to Bring the Case Within the Foregoing Jurisdictional Provisions, Including a Statement of the Grounds Upon Which it is Contended that the Questions Involved are Substantial.

The original bill in equity was filed May 19, 1931, for the purpose of enjoining certain defendants, including officers of the State of Florida, namely, certain of the members of

the Board of Commissioners of Everglades Drainage District, from acting in the enforcement and execution of a statute of the State of Florida enacted in the year 1929, being Chapter 13633 of the Laws of Florida of 1929; the first supplemental bill was filed July 4, 1931, for the purpose of enjoining among others, the said officers, and the Trustees of the Internal Improvement Fund of the State of Florida, from acting in the enforcement and execution of a statute of the State of Florida enacted in the year 1931, being Chapter 14717 of the Laws of Florida of 1931, and the second supplemental bill was filed on July 16, 1937, for the purpose of enjoining said state officers from acting in the enforcement and execution of a statute of the State of Florida enacted in the year 1937, being Chapter 17902 of the Laws of Florida of 1937. At all the times herein mentioned, all plaintiffs were citizens and residents of States other than the State of Florida, the State of residence of all of the defendants named in the foregoing bills.

The bill and supplemental bills allege a bond contract between the Board of Commissioners of the Everglades Drainage District, the Trustees of the Internal Improvement Fund and the holders of the outstanding bonds of the District amounting to approximately \$10,000,000.00, including plaintiffs as such holders, and that the subsequently enacted statutes of the State of Florida of 1929, 1931, and 1937, heretofore mentioned, impair the obligation of the bond contract in violation of Article I, Section 10, of the United States Constitution. The Trustees of the Internal Improvement Fund of the State of Florida since their creation by statute in 1855, Chapter 610 of the Laws of Florida of 1855, consisted and still consists of five of the principal State officers of the State of Florida, including the Governor of the State, the Comptroller, the State Treasurer, the Attorney General, and the Commissioner of Agriculture of the State of Florida. The members of the Board of Commissioners of the

Everglades Drainage District, when the District was formed in 1913, consisted of the same five State officers as constituted the Trustees of the Internal Improvement Fund, and pursuant to the statutes in force at all the times during which bonds of the District were being issued and sold; by the statute of 1929 the members of the Board of Commissioners were increased to ten, of whom five were State officers and five were individuals resident in the district, and by the statute of 1931 the number was reduced to five, none of whom were State officers. The primary purpose of the bill and supplemental bills was to enjoin the Board of Commissioners and Trustees of the Internal Improvement Fund from enforcing the statutes of Florida of 1929, 1931, and 1937, above referred to.

Two of the principal questions involved in the litigation are (1) whether the Acts of 1929, 1931, and 1937, impair the obligation of the bond contract between the Board of Commissioners of Everglades Drainage District and the holders of outstanding bonds of the District, including plaintiffs as such holders, by substantially reducing the amount of taxes levied by the prior statutes under which bonds of the District were authorized to be issued and were issued from time to time, and (2) whether said Acts of 1929, 1931, and 1937, impair the obligation of said bond contract by providing that lands in said District offered at tax sale for default in payment of the taxes to which they were made subject, by the statutes pursuant to which the bonds of the District now outstanding were authorized to be issued and were issued, should be bid off for the Board of Commissioners of the District instead of for the Trustees of the Internal Improvement Fund as provided in the statutes under which the bonds were authorized to be issued and were issued, in the event that at said tax sales the said lands so offered for sale were not bid in for cash in an amount equal to defaulted taxes, costs, etc. Notwithstanding the

Trustees of the Internal Improvement Fund had actually paid the taxes upon the lands bid off for them for a number of years during which bonds were being sold and after the bonds of the District had been issued and sold, the said Trustees, after the enactment of the statutes of 1929, 1931, and 1937, refused to pay such taxes and asserted that they were not under the law required to pay them. The Board of Commissioners of the District, by the terms of the statutes which are part of the bond contract, constitute a corporate entity, but the Trustees of the Internal Improvement Fund are ex officio Trustees and do not constitute a corporate entity.

The Everglades Drainage District was established by a statute of the State of Florida, as a tax District, in 1913, for the purpose of reclaiming and improving the land in the District, consisting of approximately 4,000,000 acres of land in southern Florida contiguous to Lake Okeechobee, the principal part of which consists of swamp and overflowed lands granted by the United States to the State of Florida in 1850, subject to an obligation of the State of Florida to the United States under the granting statute to reclaim the same as therein provided (Act of Congress of September 28, 1850, United States Statutes at Large, Vol. 9, page 519). By statute enacted in 1855, Chapter 610 of the Laws of Florida of 1855, the State of Florida vested in the Trustees of the Internal Improvement Fund the title to said swamp and overflowed lands so granted to the State by the United States with provisions in said statute as to the powers and duties of said Trustees in respect of said lands. For the purpose of insuring the proper performance of the duties of the said Trustees, the statute created as Trustees five principal State officers as the same should be constituted from time to time.

Up to about 1905 the Trustees of the Internal Improvement Fund, holding the title to the said lands as fiduciaries

for the State of Florida, were directly in charge of the reclamation and management thereof, and in the performance of their duties sold some of the lands, made gifts of some to railroad companies and others, and retained much of such lands which the Trustees improved in accordance with their ideas and the funds available to them for that purpose. After this long period of trustee management, the policy was adopted by the State in 1913 of forming a District (Everglades Drainage District) for the purpose of improving said lands, one of the primary purposes of which was to sell bonds of the district to the public, the proceeds thereof to be used in reclaiming and improving the lands in the district more expeditiously than the Trustees were able to do solely out of their own funds. In the effort to make such bonds salable to the public, the statutes of the State of Florida, as amended, pursuant to which the bonds of the District were authorized to be issued and were issued, divided the lands of the District into zones, and levied graduated acreage taxes upon such lands, appropriated and pledged the proceeds of the taxes for the payment of the bonds, and provided that in the event the taxes on the lands were not paid, the particular lands on which the taxes were unpaid should be offered for sale by the tax collector of the county in which such lands were located and if they were not purchased at such sale for the amount of the defaulted taxes, costs, etc., they should be bid off for the Trustees who, as plaintiffs contend, must thereafter pay the taxes on the bid off lands; and in fact, for a period of years the Trustees did pay such taxes. The provision for bidding off the lands for the Trustees was a substitute for a provision in the earlier statutes, that such lands should be bid off for the Board of Commissioners of the District. The lands so bid off for the Trustees of the Internal Improvement Fund were bid off for them as the Trustees created under the statute of 1855, and not in some

other capacity undefined in the statute providing for such disposition. On the former application by plaintiffs for interlocutory injunction, heard herein in 1932, the United States District Court, in its decision interpreting the statutes of 1929 and 1931 (57 F. (2d) 1048) determined, one judge dissenting, that the lands were bid off for the Trustees in their capacity as Trustees under the statute creating the Trustees and defining their powers and duties, and that the Trustees did not, as contended by the Board of Commissioners of the District and by the Trustees, hold the lands so bid off in trust for the Board of Commissioners of the Everglades Drainage District. After such decision by the District Court herein, the Board of Commissioners and the Trustees filed their answers in which both alleged that the Trustees held the bid-off lands, not in their capacity as Trustees under the statute which created them, but in a new and different capacity as Trustees for the Board of Commissioners of the District. After such answers had been filed the Board of Commissioners instituted a mandamus proceeding in the Supreme Court of Florida, by a petition, in which they alleged, contrary to the position which they had taken in the answer herein, that the said Trustees, the sole respondents in said mandamus proceeding, were under an obligation in respect of bid-off lands not solely confined to that of trustees for the Board of Commissioners or for the District. Throughout the present proceeding the Board of Commissioners and the Trustees have uniformly contended by pleadings, motions and otherwise that the sole status of the Trustees as to bid-off lands is as trustees for the Board of Commissioners or for the District. The District Court herein, on the motion of defendants to dismiss the bill and supplemental bills, has granted said motion, has adopted the construction made of said statutes in respect of the status in which the Trustees of the Internal Improvement Fund hold

bid-off lands, which was set forth in the dissenting opinion on the former motion herein for interlocutory injunction (57 F. (2d) 1048), and has adopted the opinion of the Florida Supreme Court in the mandamus proceeding instituted by the Board of Commissioners as relators and the Trustees of the Internal Improvement Fund as sole respondents as hereinbefore set forth. In its opinion the District Court erroneously states in substance that under the doctrine of *Erie R. R. Co. v. Tompkins*, 82 L. Ed. 787, it is required in substance to reverse its former decision and to adopt the interpretation made by the State court in said mandamus proceeding.

To induce Spitzer, Rorick & Company, an investment house, to enter into a contract with the Board of Commissioners of the District to purchase bonds of the District to be issued under the Act of 1923 as amended, the Trustees of the Internal Improvement Fund, because of their ownership of approximately 1,000,000 acres of land in said District, and their interest in the development of such land, agreed with Spitzer, Rorick & Company and the holders of bonds issued and to be issued under said Act of 1923 as amended, to pay to the Board of Commissioners of the District promptly for tax sale certificates representing lands bid off at tax sales by the tax collectors for the Trustees of the Internal Improvement Fund, such payment to be made in the same manner as an individual would pay who had bid in the said lands at tax sales. The Trustees set forth their said agreement in the minutes of their meeting held on June 16, 1925, and said minutes are included in the bill of complaint herein (par. 9). The said agreement of the Trustees is part of the bond contract which is impaired by the Acts of 1931 and 1937, especially by the provision in the former of said acts, that the said lands so bid off for the Trustees shall be conveyed by the Trustees to the Board of Commissioners, and that the Board of Com-

missioners shall issue Certificates of Indebtedness to said Trustees for the purpose of repaying the Trustees for the amounts so paid by the Trustees to the Board of Commissioners in respect of the lands so bid off for the Trustees at the tax sales.

The Trustees of the Internal Improvement Fund are essential parties defendant herein, who act as such Trustees solely as officers of the State of Florida and for the benefit of the State of Florida. In the Act of 1931 of the State of Florida, hereinbefore referred to, Chapter 14717 of the Laws of Florida of 1931, provision is made (Sec. 65 thereof) that the Board of Commissioners of Everglades Drainage District, for the purpose of repaying to the Trustees any sums of money which may have been advanced by the Trustees for the account of the District and which shall be found to be owing by the District to the Trustees, by adjustment to be made in such manner as may be agreed upon between the Trustees and the Board of Commissioners of the District, should make and issue to the said Trustees certificates of indebtedness of said Board in amounts equal to any balance remaining due to the Trustees upon such adjustment, which certificates might be used by the Trustees in payment of Everglades Drainage District taxes on lands held by them. In the same section of the Act of 1931 provision is further made that the Trustees should transfer and convey to the Board of Commissioners of the District all of the tax sale certificates made out to said Trustees by the tax collectors, representing lands bid off by said tax collectors for the Trustees. The said Act of 1931 was enacted by the legislature of the State of Florida upon the application of the Board of Commissioners of said District. In the first supplemental bill of complaint herein appropriate allegations are made concerning the foregoing provisions of the 1931 Act (pars. 4(6) and 4(7)) and in the prayers thereof as amended, relief based upon such allega-

tions is asked, substantially (prayers 4, 3) among other things, that the court enjoin the Trustees from transferring to the Board of Commissioners of the District any tax sale certificates representing lands or conveying lands, bid off for the Trustees by the tax collectors and if any such transfer has been made, that the court require the Board to retransfer said certificates to the Trustees, and to reconvey such lands; that the court enjoin the Trustees from receiving any certificates of indebtedness, from negotiating them or from issuing them in payment of Everglades Drainage District taxes on lands held by them; that the court enjoin the Trustees from disposing of any of their property unless in accordance with the statutes forming part of the bondholders' contract, and direct said Trustees to pay to the State Treasurer of Florida, as custodian of the funds of the Board of Commissioners, all amounts due from them for tax sale certificates on lands bid off for them and the subsequent taxes on said lands.

In the aforesaid Act of 1937, Chapter 17902 of the Laws of Florida of 1937, provision is made (Sec. 9 thereof) that the Board of Commissioners of Everglades Drainage District and the Trustees are given authority to enter into such agreements and settlements between them as may seem expedient in the consummation of debt refunding or adjustment plans negotiated by the Board of Commissioners in respect of the indebtedness of the District, including the bonded indebtedness, without the consent or approval of the holders of the outstanding bonds. In the second supplemental bill (par. 8) appropriate allegations are made concerning the foregoing provisions of the 1937 Act, and in the prayers thereof (prayer 7) relief, based on such allegations, is asked, substantially, among other things, that the Trustees be enjoined from entering into such agreement or settlement with the Board of Commissioners.

In the statute of Florida, being Chapter 6456 of the Laws of Florida of 1913, as amended from time to time, including the amendments made in 1925, being Chapters 10026 and 10027, Laws of Florida, Acts of 1925, Vol. 1, pp. 14, *et seq.* and pp. 41, *et seq.*, under which the bonds of the District were authorized to be issued and were issued, it is provided that the State Treasurer of the State of Florida shall be custodian of all of the funds of the Board of Commissioners and of the Everglades Drainage District, and that such funds shall be disbursed only upon the order of the Comptroller of the State of Florida, signed by the Governor of the State of Florida. In said Act it is also provided that it shall be the duty of the State Treasurer or his successor in office, as custodian of the funds belonging to said Board of Commissioners of said District, out of the proceeds of the taxes levied and imposed by the statute under which the bonds were authorized to be issued and were issued, which moneys so far as necessary are thereby set apart and appropriated for the purpose, to apply said moneys to the payment of the principal and interest of the bonds of the District as the same become due. A similar provision was made in respect of the creation of a sinking fund for the payment of the bonds. In the Act of 1931, Chapter 14717 of the Laws of Florida of 1931, the rates and amounts of acreage taxes levied on lands within the District were substantially reduced and the proceeds of the taxes levied and imposed by the statute as hereinbefore set forth, and appropriated and pledged for the payment of the bonds of the District, were divided into several funds, namely, the debt service fund, the administration fund and other funds, and only part of the proceeds of said taxes were, under the provisions of the said 1931 Act, required to be applied by the State Treasurer to the payment of the principal and interest of the bonds of the District. In the first supple-

mental bill, appropriate allegations are made in respect of the foregoing matters (par 4(2)) and relief, based on such allegations, is asked, among other things, in substance, that the Treasurer of the State of Florida, as custodian of the Funds of the District be enjoined from disbursing or applying any such funds in his possession or which he might thereafter receive, except to the payment of the principal and interest of the bonds and to the payment of the sinking fund provided for the payment of the bonds by the statutes pursuant to which the bonds were authorized to be issued and were issued.

Prior to the enactment of the 1929 Act, Chapter 13633 of the Laws of Florida of 1929, the Board of Commissioners of Everglades Drainage District was composed of the five principal State officers heretofore mentioned, pursuant to the statutes in force when the bonds of the District were authorized to be issued and were issued, namely, the Governor, Comptroller, State Treasurer, Attorney General, the Commissioner of Agriculture of the State of Florida. By the aforesaid Act of 1929 the members of the Board of Commissioners were increased to ten, composed of said five principal State officers and of five individuals, and this was the status of the membership of the Board of Commissioners at the time the original bill of complaint herein was filed (par. 2 thereof). The Act of 1931, Chapter 14717 of the Laws of Florida of 1931, purported to reduce the number of members of the Board of Commissioners to five, composed entirely of private individuals, and to continue the State Treasurer as Treasurer of the District. In the supplemental bill of complaint appropriate allegations are contained, and complaint is made (par. 4(1)) of the foregoing change in the 1931 statute eliminating the five principal State officers as members of the Board, and the plaintiffs pray (par. 9 as amended) that the court determine that

the Act of 1931, which among other things eliminated said five principal State officers from the Board, impaired the obligation of the bond contract.

In the second supplemental bill, complaint is made. (par. 4 (1)) of the provisions of the 1937 Florida statute, Chapter 17902 of the Laws of Florida of 1937, authorizing the Board of Commissioners to appoint a suitable person as Treasurer (in place of the State Treasurer) and renewing the prayers made in the bill and supplemental bill, the plaintiffs further pray, among other things (prayer 11), substantially that the court determine that it is part of the bond contract that the aforementioned five principal state officers, including the State Treasurer, are members of the Board of Commissioners of Everglades Drainage District and subject to the duties placed upon said officers in respect of the levy, imposition, collection and payment over of the proceeds of acreage taxes set apart, appropriated and pledged for the payment of the bonds of the District. On this theory the proper members of the Board of Commissioners were the five principal State officers heretofore mentioned. In the bill it is prayed (par. 4) that the Board of Commissioners be enjoined from enforcing the said Act of 1929 in the respects set forth in the prayer, including the very substantial matter of the entering of the acreage taxes on the tax rolls at the rates set forth in the Act of 1929 which were lower than contained in the prior statutes which authorized the issue of the bonds and under which the bonds were issued, and which appropriated and set aside the proceeds of the taxes in the hands of a separate custodian for the payment of the principal and interest of the bonds, and directed the custodian to pay such principal and interest out of said funds in accordance with the provisions of the statute; this prayer was renewed in the supplemental bill, in respect of the provisions of the aforesaid Act of 1931,

and in prayer 3 of the second supplemental bill, directed to the provisions of the Act of 1937.

In 1928 and 1929 before the passage of the Act of 1929, Chapter 13633 of the Laws of Florida of 1929, the five principal State officers then composing the Board of Commissioners of the District and also constituting the Trustees of the Internal Improvement Fund, who for many years and during all the time bonds of the District were being issued, had their offices together, and so far as they kept any records of their affairs kept common records, and for many purposes acted as one body, determined that they would no longer perform the bond contract between the District and the holders of its outstanding bonds, and that they would endeavor to secure the passage of legislation to accomplish their purpose; the said five State officers in the capacity of Board of Commissioners of Everglades Drainage District, then made application to the legislature to enact the Act of 1929 substantially in the form in which it was enacted, and the said five State officers as part of the said Board of Commissioners under the Act of 1929 made application to the legislature to enact the 1931 Act, substantially in the form in which it was in fact enacted. These five State officers, acting as Trustees of the Internal Improvement Fund, and the owners as such Trustees of a substantial part of all the lands in the District which they had owned long before the establishment of the District in 1913, and still owned, refused further to pay taxes on such lands in pursuance of the policy which they as members of the Board of Commissioners and as Trustees of the Internal Improvement Fund had adopted in applying to the legislature for the passage of the Acts of 1929 and 1931. Thereafter the District Court of the United States herein determined (57 F. (2d) 1048) that the Acts of 1929 and 1931 were unconstitutional in certain respects in that they impaired the obligation of the bond contract, and held that the rates of acreage taxes pro-

vided in the Act of 1923 were part of the bond contract and could not be reduced by subsequent legislation to the point where they were not sufficient to pay the principal and interest of the bonds as they matured and to pay the amount required for a sinking fund for the payment of the bonds as required by the statutes pursuant to which the bonds were authorized to be issued and were issued. The Supreme Court of the State of Florida in a mandamus proceeding (*State ex rel. Sherrill and Vann v. Millam*, 113 Fla. 491) reached a similar conclusion with the exception in substance that the State court held that the Act of 1925, Chapter 10026 of the Laws of Florida of 1925, and not the Act of 1923, Chapter 9119 of the Laws of Florida of 1923, constituted part of the bond contract. Notwithstanding such holding both by the District Court herein and the Florida Supreme Court, the Board of Commissioners of the District thereafter made application to the legislature to enact the Act of 1937 in substantially the same form in which it was enacted. The members of the Board of Commissioners of the District have therefore made continuous attempts to impair the obligation of the bond contract even in the face of the determinations of the courts, both State and Federal, that prior similar attempts by the enactment of legislation were invalid.

(e) Matters in Which it is Claimed the Court Abused Its Discretion in Denying Interlocutory Injunction.

The refusal of the court to grant the application for interlocutory injunctive decree was an abuse of its discretion in that the obligation of the contract of bondholders would be impaired in numerous respects by the enforcement of the statute of 1931 or the statute of 1937, and particularly the enforcement of the latter by the entry on the tax rolls of the rates of taxes levied therein, by the action of de-

pendants, since the rates of taxes levied in the 1931 statute and in the 1937 statute are substantially less than those levied either in the Act of 1923 or the Act of 1925, under which the bonds were authorized to be issued and were issued, and under which the proceeds of the taxes were pledged for the payment of the bonds; the entry of the taxes at the rates provided in either the 1931 statute or the 1937 statute would cause irreparable injury to the plaintiffs, in that such entry would impair the security pledged for the payment of the bonds, by creating confusion in respect of the collection of the proper amount of taxes and rendering it difficult if not impossible to have the proper amount of taxes collected for the years in which an improper amount was entered on the tax rolls; the entry of the taxes on the tax rolls was imminent and threatened; and for the foregoing reasons the denial of the application for interlocutory injunction, and the refusal of the court to grant the application to reinstate the interlocutory injunction theretofore granted was an abuse of the discretion of the court.

(f) Cases Sustaining the Jurisdiction.

Stratton v. St. Louis Southwestern Ry. Co., 282 U. S. 10;

Sterling v. Constantin, 287 U. S. 378;

Spielman Motor Sales Co. v. Dodge, 295 U. S. 89;

Interstate Busses Corp. v. Blodgett, 276 U. S. 245;

Suncrest Lumber Co. v. North Carolina Public Park Commission, 29 F. (2d) 823 (C. C. A., 4th Circ.);

Polk Co. et al. v. Glover, County Solicitor, et al., decided U. S. Sup. Ct. Nov. 7, 1938.

Appended hereto as a part hereof are:

(a) Copy of the opinion of the three judge court of April 13, 1932; and

(b) Copy of the opinion and judgment of the three judge court of August 2, 1938 denying relief and dismissing the bill and supplemental bills.

Respectfully submitted,

WILLIAM ROBERTS,
WATSON & PASCO & BROWN,
W. H. WATSON,
SAMUEL PASCO,

Solicitors for Plaintiffs, Appellants.

EXHIBIT "A".

DISTRICT COURT, NORTHERN DISTRICT OF
FLORIDA.ROBICK, *et al.*,*vs.*BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT
et al.

Opinion of April 13, 1932.

Before Bryan, Circuit Judge, and Sheppard and Strum,
District Judges.STRUM, *District Judge*:

This is a suit in equity in which bondholders of Everglades Drainage District seek injunctive relief against the Board of Commissioners of said District, the Trustees of the Internal Improvement Fund of Florida, and other officers, to restrain the effectuation by those officers of parts of Chapter 13633, Laws of Florida, Acts of 1929, and parts of Chapter 14717, Acts of 1931, which plaintiffs assail as impairing the obligation of their bond contracts, contrary to the United States Constitution, Article 1, par. 10, and as denying them due process and equal protection contrary to the Fourteenth Amendment.

Pursuant to the Act of Congress of September 4, 1841, par. 8 (43 U. S. C. A. par. 857), Florida received 500,000 acres of land for internal improvements upon her admission to the Union, March 3, 1845. Pursuant to the Swamp Lands Act of September 28, 1850, par. 14 (43 U. S. C. A. par. 982-984), Florida has received patents to more than 20,000,000 acres of swamp and overflowed lands. Grants to the state under the latter Act were subject to the proviso that such lands and their proceeds should be exclusively applied by the state as far as necessary to the reclamation thereof by means of levees and drains.

By Chapter 610, Laws of Florida, approved June 6, 1855, the unsold portions of the internal improvement lands above mentioned, and the swamp and overflowed lands patented under the Act of 1850, together with the proceeds of prior sales thereof, were constituted a separate fund known as the Internal Improvement Fund. The Governor and four other state officers were thereby constituted, and are still, ex officio statutory trustees of the fund, in whom title to those lands is vested until sold or conveyed under legislative authority.

By Chapter 610, Acts of 1855, these Trustees are charged with the duty, pursuant to the proviso of the Congressional Act of 1850, to make such arrangements for the drainage of the lands as is most advantageous to the fund and the settlement and cultivation of the lands. They have authority to sell and convey the lands, and it is their duty to apply the proceeds to the purposes of the fund as may be provided by law. Chapter 610, supra, is still in force. See Section 1384, et seq., and Sections 1401, 1408, Comp. Gen. Laws, Fla., 1927; Trustees Internal Improvement Fund v. Root, 63 Fla. 36, 58 So. 371; Trustees of Internal Improvement Fund v. Root, 59 Fla. 648, 51 So. 535.

Pursuant to the Swamp Lands Act of 1850, supra, one patent known as Everglades patent No. 137 (Hardee v. Morton, 90 Fla. 452, 108 So. 189, 191) was issued to the State of Florida, granting unsurveyed swamp lands of an estimated area of nearly 3,000,000 acres, which lands became a part of the Internal Improvement Fund under Chapter 610, supra, and subject to the statutory uses and purposes of that fund. These lands lie in an integrated area and are contiguous to the shores of Lake Okeechobee, reclamation of which lands presented unusual problems peculiar to the locality.

Reclamation by drainage of these and adjacent lands, some held by the Trustees of the Internal Improvement Fund and under Chapter 610, supra, and some vested in private ownership, was undertaken, pursuant to legislative enactment, as a separate enterprise by establishing the Everglades Drainage District, so that the limited funds available to the Trustees of the Internal Improvement Fund from the

sale of the public lands in the Everglades area could be augmented by special assessments upon all lands in the District which were benefited by the drainage improvements (except school lands, see *Southern Drainage Dist. v. State*, 93 Fla. 672, 112 So. 561), and all revenue anticipated by the issuance of bonds, thus enabling the reclamation work to promptly progress on a scale appropriate to the magnitude of the undertaking.

Following litigation as to earlier legislation, the present Everglades Drainage District was established by Chapter 6456, Acts of 1913 (Section 1530, et seq., Comp. Gen. Laws, Fla., 1927), comprising an area of approximately four million acres. Of these approximately one-fifth are now owned by the Trustees of the Internal Improvement Fund; the remainder being privately owned (except school lands). The boundaries of the District have been altered and much additional legislation enacted, but the Act of 1913 is the genesis of the present District. See *Martin v. Dade Muck Land Co.*, 95 Fla. 530, 116 So. 449, where a comprehensive legislative history of the District to 1927 will be found, prepared for the Supreme Court of Florida by Mr. Justice Whitfield.

Governmental affairs of the District are distinct from the general governmental affairs of the Internal Improvement Fund, as well as from those of the State and the several counties, although management of the affairs of the District was originally imposed, as additional administrative duties, upon the same state officers who were Trustees of the Internal Improvement Fund. Those officers until recently composed the Board of Commissioners of Everglades Drainage District. By Chapter 13633, Acts of 1929, five civilian landowners in the District were added to the Board, and, by Chapter 14717, Acts of 1931, the Board was constituted exclusively of five landowners in the District.

The questions before the Court upon defendants' motions to dismiss the original and supplemental bills of complaint, as amended, and plaintiffs' motion for interlocutory injunction, are whether or not the legislation of 1929 and 1931 here complained of (Chapters 13633 and 14717, *supra*), as well as official action taken or threatened pursuant to that and prior

legislation, impairs the obligation of plaintiffs' bond contracts, in the following respects:

First. By diminishing the tax upon which plaintiffs are entitled to rely for the payment of their bonds.

Second. By relieving the Board of Commissioners of Everglades Drainage District of their alleged obligations to pay annually into the sinking fund for the retirement of the District bonds sufficient funds of the District to pay the annual maturities.

Third. By relieving the Trustees of the Internal Improvement Fund of the obligation claimed to rest upon them under Chapter 7305, Acts of 1917, par. 3, to purchase and pay for certificates representing unpaid drainage taxes of the District when there are no other bidders at the tax sales.

Fourth. By authorizing certificates of indebtedness, issued by the Board of Commissioners of Everglades Drainage District to the Trustees of the Internal Improvement Fund under Section 65 (b') of Chapter 14717, to be used in payment of drainage taxes assessed against the public lands in the District owned by said Trustees.

Fifth. By authorizing the Board of Commissioners of the District to receive bonds and interest coupons of the District in redemption of certain tax certificates issued for unpaid drainage taxes of the District.

Sixth. By constituting the Board of Commissioners of the District of five civilian members instead of the state officers who originally, and when all now outstanding bonds were issued, composed the Board.

Chapter 6456, supra, establishing the District (Section 530 et seq., Comp. Gen. Laws Fla. 1927), authorizes the Board of Commissioners to construct a system of canals, drains, levees, dykes, etc., and to maintain the same, in such manner as the Board shall deem advantageous to drain and reclaim the lands in the District.

For the purpose of constructing, completing, and maintaining those works, that Act (Sec. 5) directly imposed

upon the lands in the District a graduated tax on an acreage basis; the land being zoned for the purpose. By numerous amendments (see Section 1534, Comp. Gen. Laws Fla. 1927), the plan of zoning has been altered and the acreage taxes increased from time to time as the bonded debt of the District was increased. Vital changes in this respect were provided in the Acts of 1929 and 1931, *supra*.

By Chapter 8412, Acts of 1921 (Section 1592, Comp. Gen. Laws Fla. 1927), an annual ad valorem tax of one mill was levied upon all real and personal property in the District "to be known as a maintenance tax and shall be used for maintenance, repairs, upkeep, and any other general or necessary purpose of the district."

The lands within the District held by the Trustees of the Internal Improvement Fund are subject to the acreage taxes above mentioned and all other taxes, including, since 1921, maintenance and ad valorem taxes, and the said Trustees of the Internal Improvement Fund, in furtherance of the trust upon which the lands are held, are authorized and empowered to pay the same out of any funds in their possession derived from the sale of lands, or otherwise. (Section 5, Chapter 6456, *supra*, as amended, now Section 1534, Comp. Gen. Laws 1927).

Section 6 of the Act of 1913, brought forward unaltered as Section 1535, Comp. Gen. Laws 1927, provides that "the proceeds arising from the acreage tax levied by this Article shall be used by the said Board (of Commissioners of Everglades District) in the construction and maintenance of such canals, drains, levees, (etc.), * * * and to the expenses of the Board in the conduct of said work and its business generally, and to repay any loans and the interest thereon, and to the creation of a sinking fund for the retirement of the principal of the bonds that the Board may issue under the provisions of this Article, and to the payment of the interest thereon."

Section 19 of the Act of 1913 originally authorized the Board to issue negotiable bonds not exceeding \$6,000,000 outstanding at any time. That Section has been amended from time to time to authorize the issuance of not exceeding \$14,250,000, exclusive of those authorized (but never

issued) by Chapter 12016, Acts of 1927, now repealed. No bonds were issued until the original Section 19 was amended by Chapter 6957, par. 10, Acts of 1915, to provide that "nothing herein contained shall be deemed a limitation of the right of the Legislature to authorize additional bonds of said Board, payable from drainage taxes within said District, provided any such additional authority shall be accompanied by the levy and imposition of additional taxes or assessments sufficient to meet the payment of the bonds authorized and interest thereon as the same shall become due; such payment to be provided for by a sinking fund as herein required, and such additional bonds shall constitute an obligation of equal dignity with the bonds herein authorized and equally with the bonds herein authorized may be entitled to payment from all drainage taxes then or theretofore imposed upon lands within said district without preference to any bonds or series of bonds over any other bonds or series of bonds." That Section, as so amended, remained in effect at least as late as 1927. Section 1553, Comp. Gen. Laws of Fla. 1927.

As future issues were authorized (see the Acts cited next hereafter), the acreage taxes were increased to provide funds for retirement of the additional bonds. Under original Section 19, bonds aggregating \$3,500,000 were issued during 1915, 1916 and 1917. These have all been retired, in part by payment and in part by refunding bonds issued by authority of Chapter 10027, Acts 1925.

By authority of successive amendments of original Section 19, additional bonds have been issued under Chapter 7862, Acts 1919, Chapter 8413, Acts 1921, and Chapter 1919, Acts 1923, codified as Section 1178, Rev. Gen. St. Fla. 1920, and Section 1553, Comp. Gen. Laws 1927. Chapter 10026, Acts of 1925, authorized \$3,000,000 additional bonds which have never been issued. Chapter 10027, Acts 1925, authorized the issuance of refunding bonds, which have been issued to the extent of \$3,842,000, and used to refund in part the original issues under the Act of 1913, the issues under the Act of 1919, and the issues under the Act of 1923. There are now outstanding \$9,919,000, including the refunding bonds.

The original Act provides that the "faith and credit" of the Board of Commissioners shall be pledged by said bonds. This provision still remains intact. Section 1555, Comp. Gen. Laws Fla. 1927.

Section 23 of the Act of 1913, brought forward unaltered as Section 1557, Comp. Gen. Laws 1927, provides, inter alia: "This Article shall without reference to any other Act of the Legislature of Florida be full authority for the issuance and sale of the bonds in this Article authorized. . . . The provisions of this Article shall constitute an irrevocable contract between the said Board and said Everglades Drainage District and the holders of any bonds and the coupons thereof, issued pursuant to the provisions hereof. . . ."

Section 24 of the Act of 1913, which also has remained in force unaltered, and is now Section 1560, Comp. Gen. Laws 1927, provides: "It shall be the duty of the State Treasurer or his successor in office, as custodian of the funds belonging to the said Board of Commissioners and to the said Drainage District, out of the proceeds of the taxes levied and imposed by this Article and out of any other moneys in his possession belonging to the said Board or to the said Drainage District, which moneys so far as necessary are hereby set apart and appropriated for the purpose, to apply said moneys and to pay the interest upon the said bonds as the same shall fall due and at the maturity of the said bonds out of the said moneys to pay the principal thereof, and there shall be and there is hereby created a sinking fund for the payment of the principal of the said bonds, and the said Board shall set apart into such sinking fund annually out of the taxes levied and imposed by this Article, and the other revenue and funds of the said District, at least two per cent of the amount of bonds outstanding. The said sinking fund for the payment of the principal of said bonds shall not be appropriated to any other purpose than that herein specified."

These provisions apply to all bonds subsequently issued, as all the subsequent authorizing Acts are amendments of original Section 19 of the Act of 1913 (except the refunding act of 1925 (Chapter 10027) which amends Section 20

of the original Act), and are not unrelated legislation, so that the subsequent amendments became in effect a part of the original Act, thus preserving the contract feature thereof just referred to. Until 1927, whenever additional bonds were authorized by amendment to original Section 19, such action was accompanied by an amendment of original Section 5, or its codification (Section 1164, Rev. Gen. St. 1920), which amendments impose additional acreage taxes by increasing the former rates, so as to provide additional funds, as required by original Section 19, as amended by Chapter 6957, Acts of 1915, hereinabove quoted.

In the several resolutions pursuant to which each series of bonds were issued, the board of commissioners provided for a sinking fund as contemplated by the statute, and further resolved that "there shall in addition be paid into the sinking fund, in time to reasonably pay the principal of said bonds after they mature, the amount of bonds maturing during such year."

Of the \$9,919,000 bonds outstanding, the plaintiffs allege that they own "many thousand dollars," and specifically \$51,000 principal past due and unpaid, and past-due interest coupons of the several issues aggregating approximately \$107,000.

These bonds were all issued by the district and acquired by plaintiffs after the enactment of the legislation already referred to embracing the sinking fund provisions; the provisions for additional taxes to meet additional bonds when authorized; the provision that the statute under which the bonds were issued should constitute an irrepealable contract between the board and holders of the bond and coupons; that all bonds should be of equal dignity and share equally and without prejudice in payment from all drainage taxes then or theretofore imposed; and other statutory provisions to which reference will be made hereafter. See sections 1553 and 1557, Comp. Gen. Laws 1927 (chapter 6456 (19), Acts 1913, and chapter 6957 (10), Acts 1915), hereinabove quoted.

By chapter 13711, Acts 1929, the Florida Legislature established a special tax district, designated as the Okeechobee flood control district, for the purpose of controlling the

flood waters of Lake Okeechobee, the Caloosahatchee river, and vicinity. The original bill of complaint herein alleges that this district as established by the statute is "practically the Everglades Drainage District with some additional territory, and it was created for the purpose of taking over and financing certain improvements which theretofore had fallen within the scope and the powers conferred upon Everglades Drainage District." This act authorizes the issuance of \$3,000,000 of bonds and levies acreage taxes upon four defined zones in the district to finance the operation of the district and to retire the bonds.

In 1929 the Florida Legislature also enacted chapter 13633, relating to the Everglades Drainage district, which act, the bill alleges, was a companion bill with the Okeechobee flood district bill, chapter 13711, *supra*. Chapter 13633, relating to the Everglades drainage district, enacted that, in lieu of all acreage taxes theretofore levied upon the lands in Everglades drainage district, the acreage taxes prescribed in said act of 1929 should thereafter be imposed. The bill of complaint charges that the taxes imposed by this act are at substantially lower rates than those imposed by the statutes under which plaintiffs' bonds were issued.

In section 6 of chapter 13633, it is provided that "there shall be deducted from the taxes hereinabove provided for as to each acre of land within said (Everglades Drainage) District in each year, an amount equal to the sum of money levied for such year upon such land as an acreage tax, under the provisions of An Act of the Legislature of Florida, creating Okeechobee Flood Control District. . . ."

Chapter 13633 further purports to authorize the board of commissioners of Everglades drainage district to reduce the taxes levied by that act in each of the zones proportionately, to the extent of not more than 25 per cent. of the levy provided in said act, and to otherwise adjust such levy.

Section 26 of chapter 13633 provides that for the funding and retiring of the obligations of said district not evidenced by bonds the Everglades drainage district is authorized to issue \$3,000,000 additional bonds. The bill alleges that no additional tax is levied to retire these bonds. Examination of the act discloses that new rates of acreage taxes were

prescribed by section 6 of this act, which rates appear to be lower than those fixed by chapter 10026, Acts of 1925, which latter rates plaintiffs' claim have become a part of their bond contract.

Certain portions of chapter 14717, Acts of 1931, as assailed by supplemental bill herein. This act re-zones the district for the purpose of levying acreage taxes, and by sections 7 and 8 prescribes new and exclusive rates of acreage taxes, imposing separately a "Debt Service Tax" for the purpose of paying principal and interest of "all obligations (not merely the bond obligations) of Everglades Drainage District heretofore incurred and now outstanding"; and an "administration Tax" for the purpose of paying costs of administration, the proceeds of these taxes being placed in separate funds limited to those purposes. These are in addition to an advalorem tax of one mill for administration purposes (section 8), and a maintenance tax (section 9). The act purports to authorize the board (section 43) to borrow against anticipated revenue in the administration and maintenance funds, and to pledge these funds to repay such loans.

Section 44 of the act of 1931 forbids the use of any avails of the taxes imposed by sections 7, 8, and 9 for any purpose other than therein prescribed, thereby limiting the participation of bonds in the drainage taxes to that portion of the tax designated as "Debt Service Tax." Section 7 of that act brings into participation of payment out of drainage taxes "all obligations now owing by Everglades Drainage District," but saving (section 44) any existing priorities. It should here be parenthetically observed that the Everglades drainage district has outstanding large obligations not evidenced by bonds.

The supplemental bill alleges that the rates prescribed in the act of 1931, for "Debt Service," are inadequate to meet the bond requirements of the district, and are substantially lower than the former rates, to the continuance of which plaintiffs allege they are entitled. The supplemental bill charges this act to be a plan to divert acreage taxes to other purposes, to the impairment of the plaintiffs' vested contract rights under former legislation; and specifically un-

der the sinking fund provisions of section 24 of the act of 1913 (Comp. Gen. Laws Fla. 1927, par. 1560). Reference will later be made to other provisions of the 1931 act, of which plaintiffs also complain.

(1) Legislation by authority of which bonds are issued, and their payment provided for becomes a constituent part of the contract with the bondholders. Such a contract is within the protection of the Constitution, art. 1, par. 10. The obligation of the bond contract, of which such legislation is a part, cannot be impaired, nor its fulfillment hampered or obstructed, by subsequent legislation to the prejudice of the vested rights of bondholders. This rule has reference to subsequent legislation which affects the contract directly, and not incidentally, or only by consequence. *United States ex rel. Von Hoffman v. City of Quincy*, 4 Wall. 535, 18 L. Ed. 403; *Board of Liquidation of Louisiana v. McComb*, 92 U. S. 531, 23 L. Ed. 623; *Louisiana ex rel. Southern Bank v. Pilsbury*, 105 U. S. 278, 26 L. Ed. 1090; *Wolff v. New Orleans*, 103 U. S. 358, 26 L. Ed. 395; *Moore v. Otis (C. C. A.)*, 275 F. 747; *Moore v. Gas Securities Co. (C. C. A.)*, 278 F. 111; *Jenkins v. Entzminger (Fla.)* 135 So. 785. As was said in *United States ex rel. Von Hoffman v. City of Quincy*, supra: "A different result would leave nothing of the contract, but an abstract right—of no practical value—and render the protection of the Constitution a shadow and a delusion."

In addition, section 23 of chapter 6456, supra (section 1557, Comp. Gen. Laws Fla. 1927), specifically provides that "this act" (meaning the Everglades Drainage District Act) shall constitute an "irrepealable contract" between the board of commissioners and holders of bonds issued under the act. Contracts of this nature have been held impaired by subsequent legislation undertaking to lower the former statutory basis of assessment, *Town of Samson v. Perry (C. C. A.)*, 17 F. (2d) 1; or to divert proceeds of assessments from the payment of obligations to pay which they were levied, *Moore v. Otis (C. C. A.)*, 275 F. 747; *Nelson v. Pitts*, 126 Okl. 191, 259 P. 533, 53 A. L. R. 1137.

(2) An impairment occurs when the value of the contract has been diminished by subsequent legislation. The ques-

tion of impairment is not one of degree, but of encroaching in any respect upon the obligation-dispensing with any part of its force. *United States ex rel. Van Hoffman v. City of Quincy*, 4 Wall. 535, 18 L. Ed. 403; *Green v. Biddle*, 8 Wheat. 84, 5 L. Ed. 547; *Bank of Minden v. Clement*, 256 U. S. 156, 41 S. Ct. 408, 65 L. Ed. 857; *Farrington v. Tennessee*, 95 U. S. 679, 683, 24 L. Ed. 558, 559; *Planters' Bank v. Sharp*, 6 How. 301, 12 L. Ed. 447.

It is significant that, until the act of 1927, the symmetry of the original act of 1913 was retained, additional bonds having been authorized, and increased acreage taxes levied to pay the same—not by unrelated legislation—but by successive amendments of sections 19 and 5 of the original act, or sections of the Revised General Statutes in which they were codified.

(3, 4) Though the state cannot by contract surrender its sovereign prerogatives in the performance of essential governmental duties (*Contributors v. City of Philadelphia*, 245 U. S. 20, 38 S. Ct. 35, 62 L. Ed. 124), nevertheless, when the state authorizes a taxing subdivision to contract by issuing bonds and to exercise the power of local taxation to the extent necessary to meet such obligations, the power thus given cannot be withdrawn so long as its exercise is necessary to satisfy the vested rights of bondholders. In such cases, the state and the subordinate taxing unit are equally bound. "The power given becomes a trust which the donor cannot annul, and which the donee is bound to execute." *United States ex rel. Von Hoffman v. City of Quincy*, 4 Wall. 535, 18 L. Ed. 403; *Board of Liquidation of Louisiana v. McComb*, 92 U. S. 531, 23 L. Ed. 625; *Galena v. Amy*, 5 Wall. 705, 18 L. Ed. 560; *Mobile v. Watson*, 116 U. S. 289, 6 S. Ct. 398, 29 L. Ed. 620; *Jenkins v. Entzminger (Fla.)*, 135 So. 785; *State of Louisiana ex rel. Nelson v. Police Jury* 111 U. S. 716, 4 S. Ct. 648, 28 L. Ed. 574; *Rorick v. Board (D. C.)*, 27 F. (2d) 377.

(5) In *Trustees v. Bailey*, 10 Fla. 112, 81 Am. Dec. 194, it was held upon the same principles here under consideration that, at the instance of holders of bonds issued under the Internal Improvement Act of Florida of January 6, 1855, the trustees of said fund would be enjoined from ap-

appropriating any portion of that fund to purposes other than those named in the act so as to endanger the bondholders' security, even though such other appropriation be commanded by a subsequent act of the Legislature. In that it is aptly said: "The State is as capable of making a contract as an individual is, and when made is as much bound by it."

(6) The board of commissioners here contends that the Legislature may now appropriate a portion of the acreage taxes to the payment of administration expenses, and other obligations of the district, as provided in the acts of 1929 and 1931.

Although section 6 of the act of 1913 provides in general terms that the proceeds of the acreage taxes levied by section 5 shall be used, amongst other things, to pay the "expense" of the board in "its business generally," that section also provides that such proceeds shall be used to create a sinking fund for the bonds. Section 24 of the Act of 1913 specifically and in detail provides that the proceeds of the acreage taxes and any other revenue of the District shall be used to pay interest on the bonds and to create a sinking fund for the retirement of the bonds, and that there shall be paid into this sinking fund annually not less than 2 per cent of the amount of outstanding bonds. Said funds, insofar as necessary for the purpose, are expressly "set apart and appropriated." Appropriation of these moneys for any other purpose is expressly prohibited. The reference to "expenses" in Section 6 is general, but the provision for the sinking fund, found in Section 24, is specific and mandatory, qualifying pro tanto the general language of Section 6. If it be assumed that section 6 invests the Board of Commissioners with authority to use proceeds of the acreage taxes for administration expense or to pay its unbonDED obligations, it is clear from the rigid language of Section 24 that the Legislature did not intend such authority to be exercised to the prejudice of these specific interest and sinking fund provisions, for which purposes these funds were specifically appropriated and segregated, and the sinking fund treasurer mandatorily and unconditionally directed to

ply them. See *People v. Brooks*, 16 Cal. 11, text 28, 30; 6 R. C. L. 334.

Payment of administration or other expenses or obligations out of acreage taxes levied to pay bonds issued under Section 19, and its amendments, is at least limited to the residue of such funds after first meeting the interest and sinking fund requirements.

A similar legislative construction is discernible in the passage in 1921 of Chapter 8412, providing a separate ad valorem tax which "shall be used for maintenance, repairs, upkeep, and any other general or necessary purpose of the District." Section 1 (Comp. Gen. Laws Fla. 1927, par. 1592). This Act was passed a little more than five years after the first bonds were sold, when the necessity for substantial maintenance expense was probably first encountered, and this additional tax was then provided to meet such expense.

(7) Moreover, the Act of 1913 pledged the "faith and credit" of the District for the payment of the bonds, which in effect, with bonds payable from the sources here involved, pledges the resources of the District. *Duval Cattle Co. v. Hemphill (C. C. A.)*, 41 F. (2d) 433, 438. The Board of Commissioners by resolution, pursuant to which each series of bonds was issued, bound itself unconditionally to pay into the sinking fund sufficient moneys to pay the annual maturities. As the statute fixed only a minimum requirement for the sinking fund, these resolutions were within the Board's authority, and are a part of the bond contract.

(8, 9) We hold, therefore, that the provisions of Chapter 6456, Acts 1913, and its several amendments pursuant to which plaintiffs' bonds were issued and acreage taxes to pay the same were levied, constitute a contract between plaintiffs and the District; that the legislation imposing acreage taxes to pay those bonds and interest, which was in effect when the bonds were issued, cannot be withdrawn, nor can the proceeds of such taxes be diverted to other purposes, so long as such proceeds are necessary to pay interest and create a sinking fund as prescribed by Section 24 of Chapter 6456, now Section 1560, Comp. Gen. Laws 1927,

and the several resolutions of the Board, all of which are parts of the bond contract. We further hold that the proceeds of the acreage taxes and other funds of the District (except the ad valorem tax under the Act of 1921) are specifically appropriated (*Lainhart v. Catts*, 73 Fla. 735, 75 So. 47, text 54; *Bannerman v. Catts*, 80 Fla. 170, 85 So. 336; *State v. Allen*, 83 Fla. 214, 91 So. 104, text 105, 2 A. L. R. 735), and pledged to the extent and for the purposes just mentioned; the appropriation and pledge continuing so long as these funds are necessary to meet the requirements of the bonds issued pursuant thereto. It is the duty of the state treasurer and of the Board of Commissioners to devote said funds to the purposes named, as far as may be necessary, before using any part thereof for any other purpose.

If, as urged by the Board, it would by this holding be left without adequate operating or maintenance revenue, the situation may be met by further exertion of the taxing power to provide the same.

(10) The Board cites numerous cases, such as *White v. Mayor of Decatur*, 119 Ala. 476, 23 So. 999; *City of East St. Louis v. U. S.*, 110 U. S. 321, 4 S. Ct. 21, 28 L. Ed. 162; and *Clay County v. U. S.*, 115 U. S. 616, 6 S. Ct. 199, 29 L. Ed. 482 (See, also, 44 C. J. 1374), to the effect that, where the principal and interest of bonds constitute a charge upon general revenue of a city or county, such charge operates only upon surplus revenues after paying necessary operating and governmental expenses. But those cases are not in point. Neither the functions of the Everglades Drainage District, nor the purpose of its organization, are analogous to those of a city or county. The District is not for general governmental purposes, but it is a "statutory subdivision . . . for special governmental purposes"; namely, for local improvement purposes. The acreage taxes are not "general revenue" for purposes of "general government", within the sense of the cases last cited, but are "special assessments" imposed solely to pay "for benefits to accrue from the public improvement." *Martin v. Dade Muck Land Co.*, 95 Fla. 530, 116 So. 449, text 464, 468; *Bannerman v. Catts*, 80 Fla. 170, 85 So. 336.

The consequences of the differences pointed out are well defined in *Village of Kent v. U. S. (C. C. A.)*, 113 F. 232, which is a complete answer to this contention. See, also, *Lainhart v. Catts*, 73 Fla. 735, 75 So. 47, text 52. Nor in the cases cited by the Board was there a specific segregation of the bond funds and a requirement that they be disbursed for designated purposes, as there is here. It is held in Florida that even general creditors of a municipality, holding claims secured by general taxation, may enforce their claims by mandamus where there is a fund on hand out of which payment is authorized and required, and which is sufficient for the purpose. *State ex rel. N. Y. Life Ins. Co. v. Curry (Fla.)*, 139 So. 891, opinion filed Feb. 16, 1932.

(11, 12) The Board also contends that, as the acreage taxes are special assessments based upon benefits, the Legislature has the inherent power to redetermine the benefits at any time and to reduce or vary the special assessments accordingly. As respects the taxpayer alone, the Legislature may undoubtedly do so. *Bannerman v. Catts*, 80 Fla. 170, 85 So. 336. But the power of taxation must be exercised consistently with the principles which preserve the inviolability of contracts. *Graham v. Folsom*, 200 U. S. 248, 26 S. Ct. 245, 50 L. Ed. 464; *Mobile v. Watson*, 116 U. S. 289, 6 S. Ct. 398, 29 L. Ed. 620. The taxing power cannot be exercised so as to impair the obligation of contracts by directly abrogating or diminishing the means by which contracts, entered into in reliance upon such taxing power, can be performed. *Louisiana ex rel. Southern Bank v. Pilsbury*, 105 U. S. 278, 26 L. Ed. 1090; *United States ex rel. Von Hoffman v. City of Quincy*, 4 Wall. 535, 18 L. Ed. 403; *Jenkins v. Entzminger (Fla.)* 135 So. 785. If the assessment levied in any instance exceeds the benefits, the taxpayer, in the absence of waiver or estoppel, may secure appropriate judicial relief by the force of constitutional principles applicable to that situation, and bondholders would have to abide the consequences, as they took their bonds with notice that they are payable from special assessments. We are here concerned, however, with a voluntary reduction by legislative or administrative action, to the alleged impairment of plaintiffs' contract rights as a bondholder. We are

not here concerned with the validity of any of these Acts as taxing measures.

(13) It becomes material to now determine what rates of acreage taxes, as levied by the several Acts, are within the obligation of the bond contracts of these plaintiffs.

Plaintiffs contend that they are entitled to the rates levied by Chapter 10026, Acts 1925, which are substantially higher than those imposed by the Act of 1923, and prior acts. Chapter 10026 is an amendment of Sections 1160, 1164, and 1178, Rev. Gen. St. 1920, which Sections are, respectively, a codification of Sections 1, 5 and 19 of the original Act of 1913, as amended. Chapter 10026 altered the boundaries of the District; authorized the issue of \$3,000,000.00 additional bonds; and, conformably to the requirements of Chapter 6957, Acts of 1915 (Section 10), provided additional taxes by increasing the former rates of acreage taxes. These additional bonds have never been issued. Plaintiffs contend that, notwithstanding that fact, the refunding bonds issued pursuant to Chapter 10027, Acts 1925, some of which plaintiffs own, were by the latter Act constituted "an obligation of equal dignity with any and all other bonds heretofore, or that may hereafter be, issued against and by said District," thereby placing these refunding bonds on a parity of obligation and payment with other bonds, from which the plaintiffs conclude that "the refunding bonds were issued and sold in reliance upon the rate of taxation imposed by Chapter 10026," thereby constituting the rates fixed by the latter Act of part of the bond contract as to the refunding bonds.

Although the refunding bonds are on a parity of obligation and payment with the other bonds of the district, we do not concur in the view that plaintiffs have acquired a vested contract right in the rates fixed by Chapter 10026. Plaintiffs purchased their bonds (except the refunding bonds, which will hereafter be dealt with) when the rates fixed by the Act of 1923, or prior Acts, were in effect, and in reliance upon the rates fixed by those Acts,—not upon the 1925 Act. To the extent of the increase in rates prescribed by Chapter 10026, those rates are in the nature of an offer or proposal to prospective bondholders who may purchase

bonds in reliance upon such increase. That offer has not been accepted, as no additional bonds authorized by Chapter 10026 have been issued. This situation is contrary in that respect to the facts in *Louisiana ex rel. Southern Bank v. Pilsbury*, supra, wherein the plaintiffs' bonds were acquired after, and in reliance upon, the supplemental Act increasing the levy. To the extent of the increase over the former rates, the additional taxes levied by Chapter 10026 do not constitute a specific trust fund for the benefit of plaintiffs' bonds, as was the case in *Baring v. Dabney*, 19 Wall. 1, 22 L. Ed. 90, upon which plaintiffs rely, but to the extent of such increase they constitute "additional taxes" to pay the "additional" bonds authorized by the Act, which is all that is required in the plaintiffs' bond contract, this particular phase of which rests in Chapter 6957, par. 10, Acts of 1915. We are not now concerned with what the situation may be if and when additional bonds are issued by authority of Chapter 10026. Until some of the additional bonds authorized by Chapter 10026 are issued and sold, there is no consideration for the increased rates therein provided; and such increases do not come into operation as a part of the Board's contract with existing bondholders who acquired their bonds in reliance upon the rates fixed by prior acts. Until additional bonds are sold pursuant to the 1925 Act, the rates fixed by that Act are a potential—not a vested—right as to the holders of bonds issued under prior Acts. *United States v. County Court (C. C.)* 2 F. 1.

The same is true as to the rates fixed by Chapter 13633, Acts 1929, under which \$3,000,000 additional bonds were authorized but never issued.

(14) Nor does the issue of refunding bonds under Chapter 10027 bring into operation the increase in rates provided in chapter 10026, so as to give plaintiffs a vested right in such increase. Chapter 10027 is not an amendment of original section 19, which relates to the issue of bonds and additional bonds. It is an amendment of original section 20, which relates to redemption (and denomination) of bonds. These refunding bonds are in lieu of other bonds outstanding under the 1923 act and prior acts, which former bonds were retired pro tanto by the proceeds of these refunding

bonds. There is no authority in this act to fund or refund any obligations of the district other than existing bonds and interest thereon. The indebtedness of the district, therefore, was not increased, nor was any additional indebtedness created by the refunding bonds. Their issue was a renewal (See *Davis v. Dixon*, 98 Fla. 87, 123 So. 536, text 538; *State v. Weinrich*, 291 Mo. 461, 236 S. W. 872) of an existing debt which had been incurred in reliance upon the rates of taxation fixed by the 1923 act, and prior acts. The refunding bonds are therefore not "additional" bonds within the sense of chapter 6957 (section 10) Acts of 1915, so as to require the levy of "additional" taxes, although such refunding bonds are of equal dignity with all other outstanding bonds and are entitled to parity of payment out of the sinking fund hereinabove referred to. No specific increase in tax rates having been levied or authorized in the refunding act, the tax levies applicable to the retired bonds apply also to the refunding bonds by which the former bonds were retired.

(15) We hold, however, that the tax levy imposed by chapter 9119, Acts of 1923, the latest act pursuant to which plaintiffs' bonds (other than refunding) have been issued, is a part of plaintiffs' bond contract. As against the district and its managing officers, plaintiffs are entitled to the continued levy of drainage taxes as fixed by that act, or their equivalent, so long as necessary to pay interest and provide a sinking fund as required by section 24 of the original act of 1913 (section 1560, Comp. Gen. Laws 1927) and by the resolutions of the Board pursuant to which plaintiffs' bonds were issued. Whatever may be the judicially determined rights of taxpayers in respect to the assessments against their lands, voluntary legislative or administrative action which has the effect of directly diminishing the potency or benefits of the act of 1923, either by reduction of taxes or diversion of proceeds to administration or other purposes, impairs the obligation of plaintiffs' contract. *United States ex rel. Von Hoffman v. City of Quincy*, 4 Wall. 535, 18 L. Ed. 403; *Board of Liquidation of Louisiana v. McComb*, 92 U. S. 531, 23 L. Ed. 625; *Galena v. Amy*, 5 Wall. 705, 18 L. Ed. 560; *Trustees v. Bailey*, 10 Fla. 112, 81 Am. Dec. 194; *Jenkins v. Entzminger* (Fla.) 135 So. 785.

(16-20) We hold, therefore, that section 26 of Chapter 13633, Acts 1929, to the extent that it purports to authorize the issuance of \$3,000,000 additional bonds, is inoperative as against these plaintiffs, unless the taxes therein levied are a sufficient increase over those fixed by the act of 1923 to pay the additional bonds. Whether or not they are is a question of fact. We further hold that section 6 of chapter 13633, in so far as it purports to fix acreage taxes, or to authorize the board to make deductions (on account of Okeechobee flood control district or otherwise) or reductions below those imposed by chapter 9119, Acts 1923, or a substantial equivalent thereof, or to otherwise diminish the funds provided by the act of 1923 for the payment of bonds issued pursuant to that and prior acts, is inoperative as against these plaintiffs. Sections 7 and 8 of chapter 14717, Acts 1931, and those portions of sections 43 and 44 of said section 14717, which purport to fix acreage taxes and to create an administration fund from the proceeds of acreage taxes, are also inoperative against the plaintiffs in so far as those sections result in reducing or diverting the proceeds of drainage taxes so that the amount thereof available for interest and sinking fund requirements for outstanding bonds will be less than under chapter 9119, Acts 1923. Nor may the proceeds of the administration fund be pledged pursuant to section 43 (d) to the prejudice of interest and sinking fund requirements to which plaintiffs are entitled. Moreover, those portions of sections 7 and 44 (b) of Chapter 14717, which purport to bring into participation of payment from the proceeds of acreage taxes obligations of the district other than bond obligations, are likewise inoperative as against these plaintiffs until all interest and sinking fund requirements for said bond obligations, as hereinabove adjudicated, have been fully met.

(21) Section 70 of chapter 14717 purports to authorize the issuance of district bonds for the purpose of refunding any "bond, note certificate of indebtedness, or other obligation now outstanding, for the payment of which the credit of . . . District is pledged" subdivision (a), but levies no additional tax. The district now has outstanding large obligations not represented by bonds. So far as bonds may

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

440

38-69



be issued under this section for the sole purpose of refunding existing bonds issued pursuant to the act of 1913 and its amendments, plaintiffs' bond contract would not be impaired. The same situation would obtain as with the refunding bonds issued under chapter 10027, hereinabove discussed. Section 70 (i) purports to make these refunding bonds payable from the debt service fund provided in sections 7, 43, and 44 of the act, which fund in turn is derived from acreage taxes. In so far as the issue of bonds might be attempted under this section for the purpose of paying "notes, certificates of indebtedness or other obligations" of the district, such bonds would be funding—not refunding—bonds. While the indebtedness of the district might not be thereby increased, nevertheless, as against these plaintiffs it would bring into participation of payment out of acreage taxes what, as to the plaintiffs, would be "additional" bonds payable from acreage taxes, unaccompanied by the levy of additional taxes sufficient to pay the same, contrary to chapter 6957, Acts 1915, section 10, and, to the extent that such bonds were issued for any of the purposes last named, such action would be an impairment of plaintiffs' contract obligation. While under section 6 of the original act there would seem to be no objection to the use of acreage taxes to pay unbonded indebtedness after the sinking fund requirements of section 24 have been fully met, the issue of additional bonds without the levy of sufficient additional taxes to pay the same is forbidden, as against bondholders, by chapter 6957, Acts 1915, section 10, and there is a reasonable basis for the distinction.

(22) An argument is made in plaintiffs' briefs as to the validity of the unit district plan provided in sections 10 to 42, inclusive, of the act of 1931, and the issuance of further bonds thereunder, but as these sections are not assailed by the bill of complaint, we do not consider them.

(23) This disposes of the first and second questions hereinabove stated. We now take up the third.

Under section 12 of the original act of 1913, when lands in the district were sold for non-payment of drainage assessments, and when there were no bidders at the sale, the

tax collector was required to bid off such land for the board of commissioners of Everglades drainage district.

The bill of complaint alleges that, after the sale of bonds under the act of 1913, as amended in 1915, it was required as a condition of the purchase of additional bonds by buyers that the last-mentioned provision of section 12 be changed, and that accordingly chapter 7305, Acts of 1917, was enacted, section 3 of which (section 1541, Comp. Gen. Laws 1927) amends section 12 of the original act of 1913, and provides: " * * * In case there are no bidders, the whole tract (upon which drainage taxes are unpaid) shall be bid off by the tax collector for the trustees of the Internal Improvement Fund, and shall be held by said trustees during the period herein allowed for the redemption of said lands in like manner and with like effect as lands sold to the State for non-payment of State and county taxes are held by the State, as now provided by law." Section 4 of Chapter 7305 provides that the tax collector shall issue a tax certificate to the trustees of the internal improvement fund as of the date of sale, "and if the land is not redeemed on or before two years from the date of such certificate, the title to the same shall immediately vest in the said Trustees without the issuing of any deed as provided in other cases, and the certificates held by the said Trustees shall be evidence of the title of the said Trustees." Chapter 10024, Acts 1925, and chapter 14717, Acts of 1931, purport to alter the redemption period. The trustees are authorized to sell and convey such lands, and the proceeds thereof "shall be applied by said Trustees in payment of drainage taxes or assessments, or other obligations of said Trustees." Tax certificates held by the trustees may be redeemed within the time prescribed, and the amount paid upon such redemption is remitted to the trustees. Chapter 7305, par. 5, Acts 1917 (Comp. Gen. Laws 1927, par. 1547).

Under then existing laws, when state and county taxes were unpaid, the lands were sold, and if there was a private purchaser, a certificate was issued to him, for which he was required to pay at the time of the purchase. Section 974, Comp. Gen. Laws, Fla. 1927. In the absence of a private purchaser, the lands were bid off to the state, no payment

being required by the state, future taxes against such lands being omitted until a redemption occurred. After two years the private purchaser could apply for and receive a deed. When land was bid off to the state, title thereto vested in the state two years after the issuance of the certificate, but the lands remain subject to redemption until a tax deed is issued to a private purchaser who might purchase the certificate from the state and, after two years from the date of the certificate, apply for a deed.

Viewing the history of this legislation in the light of the allegations of the bill of complaint, it appears that by 1917 it had become apparent that drainage taxes might remain unpaid to such an extent that funds of the district would be insufficient to meet bond requirements if additional bonds were issued, and that, before additional bonds would be salable, it would be necessary to guard against such a situation. This was undertaken by requiring the trustees of the Internal Improvement Fund, instead of the Board of Commissioners, to become the purchasers of all tax certificates for which there was no other purchaser, thus preventing tax default and consequent depletion of the district fund available for interest and sinking fund requirements. The provisions of the Act of 1917 relating to the trustees are harmonious with the purposes of the Internal Improvement Fund as defined by Chapter 610, Acts 1855. See *Martin v. Dade Muck Land Co.*, 95 Fla. 530, 116 So. 449.

Although the Act of 1917 does not in terms require the trustees to "pay for" the certificates bid in for them, it is obvious that such was the legislative intent. No purpose is evidenced to make a gift of these lands to the trustees. According to the allegations of the bill, the trustees have so construed the Act by paying for such certificates, and paying subsequent drainage taxes on certificated lands, until 1927, but not since.

Nor does the Act of 1917 in express terms fix the time when the trustees shall pay for their certificates. The Act of 1917, requiring all lands for which there were no other purchasers to be bid in for the trustees, must be construed in *pari materia* with other parts of the 1913 act, of which the act of 1917 is an amendment. By Section 13 of the

original act, which has remained unaltered (see section 1542; Comp. Gen. Laws 1927, also chapter 14717, par. 56 (d), when lands are sold for taxes, the tax collector must require immediate payment "by any person to whom any parcel of such land may be struck off. . . . "The Act of 1917 requires the tax collector to issue tax certificates to the trustees at the time of sale, just as to any other purchaser. Although section 17 of the original act provided that proceeds of redeemed certificates should be paid to the board of commissioners, the amendatory act of 1917 provides that, when certificates bid in for the trustees are redeemed, the proceeds of such redemption shall be remitted to the trustees. There would seem to be no occasion for the latter provision, unless the Legislature contemplated that the trustees should have previously paid for the certificates. Otherwise, the proceeds of redemption should go to the district as its property. No legislative intent is evidenced by the act to postpone payment by the trustees for their certificates beyond the time fixed for payment by other purchasers, and we see no sufficient reason why the act should be so construed. Although the word "person" is frequently held not to embrace public governmental bodies, such as cities and counties, we see no reason why that word as used in section 13 of the original act—of which the act of 1917 is amendatory—should not apply to the trustees, dealing as it does, not with governmental affairs, but with business transactions in connection with contract rights. The provisions of the Act of 1917, section 3 (Comp. Gen. Laws 1927, par. 1541) that lands bid off for the Trustees "shall be held by said Trustees during the period herein allowed for the redemption of said lands in like manner and with like effect as lands sold to the State for non-payment of State and County taxes are held by the State" merely analogizes the two situations with respect to the status of the lands during the redemption period, the vesting of title when lands are not redeemed the further sale of tax certificates by the trustees to private persons, and the like. That the state does not under general tax laws pay for lands bid off to it, does not, in view of the provisions of original section 13 of the Ever-

glades Act, relieve the trustees from paying for the certificates bid off for them as indicated.

We hold, therefore, that chapter 7035, Acts of 1917, is a part of the contract with bondholders, furnishing an additional measure of security upon which they are entitled to rely, and that it is the duty of the trustees of the Internal Improvement Fund to pay for drainage tax certificates immediately when the lands are bid off for the Trustees. This refers, of course, to certificates representing unpaid drainage taxes, the levy of which is a part of the bond contract. This disposes of the third question. We now take up the fourth.

(24, 25) By Section 5 of the original act, as amended (section 1534, Comp. Gen. Laws 1927), lands within the district "held" by the trustees of the Internal Improvement Fund are subject to drainage taxes, and the trustees are authorized and empowered to pay the same, "in furtherance of the trusts upon which the said lands are held," the latter referring to the grant under the Swamp Land Congressional Act of 1850. In section 48 of the Act of 1931, this provision is brought forward and the language of the corresponding former provision is emphasized by adding that these lands shall be subject to taxes "in same manner as privately owned lands." It is conceded that public lands held by the trustees and which have never been disposed of are subject to these taxes, but as to lands reacquired by the trustees through tax sales pursuant to chapter 7305, Acts 1917, section 4, the trustees deny liability for subsequent taxes.

The Act of 1917 (section 4) provides that, when lands are bid off for the trustees, a tax certificate shall immediately issue in the name of the trustees "and if the land is not redeemed on or before two years from the date of such certificate, the title to the same shall immediately vest in the said Trustees . . . and the certificates . . . shall be evidence of the title of the said Trustees." The Trustees are authorized to sell such lands, execute a deed therefor, "as other deeds made by them are signed and shall vest in the grantee . . . the fee simple estate

to such lands." The proceeds of such sales, including any profits realized, are the property of the trustees and are to be devoted to the obligations of the trustees, including drainage taxes. If tax certificates held by the trustees are redeemed, the proceeds of the redemption go to the trustees to be used as required by law.

These and other provisions, when adjusted to their proper perspective in relation to the entire Everglades Legislation, lead us to hold that, so far as the bond contract is concerned, lands thus bid in for the trustees (commonly referred to as "certificated" lands) become "lands within the Everglades Drainage District 'held' by the Trustees of the Internal Improvement Fund," within the meaning of section 5 of the original Act, two years after the date of the certificate, when title vests in the trustees if the certificate be not sooner redeemed.

As these provisions are a part of the bond contract, it is the duty of the trustees to pay drainage taxes levied on such lands from and after the time when title vests in the trustees pursuant to the acts under which plaintiffs' bonds were issued, such payment to be made from funds derived by the trustees from "the use or sales of swamp and overflowed lands held by the trustees * * * under the trusts declared in chapter 610, Acts 1854-1855 * * * and subsequent amendatory and supplemental statutes." *Martin v. Dade Muck Land Co.*, 95 Fla. 530, 116 So. 449, headnote 3. Although the powers and duties of the trustees are subject to legislative control, the trustees cannot, even by legislative direction, execute a later trust to the direct prejudice of contract rights of third parties in the execution of a prior trust. *Trustees of Internal Imp. Fund v. Root*, 99 Fla. 648, 51 So. 535.

(26) Although all lands bid off for the non-payment of taxes remain charged with the lien of subsequent taxes (Chapter 7305, par. 2, Acts 1917, Comp. Gen. Laws 1927, par. 531), which would include lands bid off to the trustees, we discover no duty imposed by the statute upon the trustees to pay drainage taxes during the two years that the tax certificate is pending and subject to redemption, as the lands are not during that period held by the trustees within the

meaning of section 5 of the original act, but are held "in like manner and with like effect as lands sold to the State for non-payment of State and County taxes." Section 3, chap. 7305 (section 1541, Comp. Gen. Laws 1927).

(27) If it were not the recognized legislative intent that the trustees should pay taxes on certificated lands after title thereto vests in the trustees, it is strange that for fourteen years—from 1917 to 1931, no legislative attempt was made to so declare. The bill of complaint alleges, also, that the trustees paid these taxes until 1927. That subsequent taxes are omitted and not paid by the state upon lands for which it holds tax certificates under general taxation statutes does not by analogy relieve the trustees of their obligation just stated, in view of the express provisions of section 5 of the original act, as amended (Comp. Gen. Laws 1927, par. 1534).

(28) We also hold that under the act of 1917, so far as the rights of these plaintiffs are concerned, tax certificates issued to the trustees are held by them in their own right as trustees of the Internal Improvement Fund under chapter 610, supra, and not in trust for the Board of Commissioners.

(29) By sections 56 (c), 65 (a), and 65 (b) of chapter 14717, Acts 1931, it is enacted that, when there are no other bidders at tax sales the lands shall be struck off for the Board of Commissioners (not to the trustees of the Internal Improvement Fund, as has been the case since 1917); that tax certificates now held by the trustees, resulting from tax sales of former years, are held by said trustees in trust for the Board of Commissioners; that the trustees shall assign to the board all such tax certificates now in the hands of the Trustees, to receive compensation therefor from the Board; and that any sum of money found to be owing from the Board to the Trustees by reason of such assignment may be paid by the relinquishment by the Board of its rights in such tax certificates as may be agreed upon, and for any balance then remaining the Board may issue its certificates of indebtedness to the Trustees, which certificates of indebtedness shall be receivable by the Board of Commissioners from the trustees, or from any person who shall thereafter purchase lands within the district, in payment of drainage taxes

upon lands which at the enactment of the statute were held, or may hereafter be held, by the trustees, and that such certificates of indebtedness shall be liquidated as they are presented in payment of drainage taxes upon such lands. The effect of these provisions is to entirely destroy duties and obligations now and heretofore resting on the Trustees which are a part of plaintiffs' security and one of plaintiffs' remedies against default in payment of their bonds.

In the view we have taken of chapter 7305, Acts 1917, as it relates to the trustees of the Internal Improvement Fund, the three last-mentioned sections of the Act of 1931, for obvious reasons, impair the obligation of plaintiffs' bond contract, and as to the plaintiffs are inoperative. *Barnitz v. Beverly*, 163 U. S. 118, 16 S. Ct. 1042, 41 L. Ed. 93; *Moore v. Gas Securities Co. (C. C. A.)* 278 F. 111; *Moore v. Otis (C. C. A.)* 275 F. 747; *In re Cranberry Creek Drainage Dist.* 202 Wis. 64, 231 N. W. 588.

Section 67 of the 1931 Act is also assailed by the supplemental bill, but, as that section depends for its operation upon the validity of other sections which we have held inoperative, it is unnecessary to consider that section in detail. This disposes of the fourth question.

(30) As to the fifth: Section 71 of the Act of 1931 enacts that "in the redemption of land from tax certificates which shall be transferred to the Board under the provisions of this Act, and in the redemption of land which shall be sold to the Board for the non-payment of the taxes assessed for the year 1930," the person entitled to redeem may pay the amount requisite for redemption with bonds of the district, or interest coupons, at par. This section does not purport to extend that privilege to the redemption of certificates held by the trustees, nor to the redemption of lands sold to the trustees. Operation of the latter provision of the section depends upon the existence of one of the two conditions recited in the first part of the section. As we have held that the provision for the transfer of outstanding tax certificates by the trustees to the board and the provision for future certificates, to be bid off for the board are both inoperative as against these plaintiffs, it leaves no field in which section 71 may lawfully operate, because, as against these plaintiffs,

there can be no certificates assigned by the trustees to the board and no lands struck off to the Board, until the requirements of plaintiffs' bond contract are satisfied. We therefore do not express an opinion as to how far, if at all, the Legislature may authorize the payment of drainage taxes, or the redemption of tax certificates from their lawful owners, with bonds in lieu of cash.

(31, 32) As to the sixth question: The provisions of the 1931 Act, changing the personnel of Board of Commissioners to five civilians in lieu of five state officers as originally provided, impairs no vested contract right of plaintiffs. The district remains, with officers empowered to perform all its duties toward bondholders. Neither the resources nor the remedy for the payment of plaintiffs' bonds are affected within the purview of the contract clause of the Constitution. A mere change in personnel of a public board or body is not usually regarded as an impairment of contract obligations. See *State v. Knowles*, 16 Fla. 577; *Graham v. Folsom*, 200 U. S. 248, 26 S. Ct. 245, 50 L. Ed. 464; *Mobile v. Watson*, 116 U. S. 289, 6 S. Ct. 398, 29 L. Ed. 620; *State v. Goodgame*, 91 Fla. 871, 108 So. 836, 47 A. L. R. 118; *Board v. Phillips*, 67 Kan. 549, 73 P. 97, 100 Am. St. Rep. 475; 1 *Cooley Const. Lim.* (8th Ed.) p. 560; 12 C. J. 1008.

Interlocutory injunction will issue conformable to the views here expressed.

BRYAN, Circuit Judge (dissenting in part):

I dissent from so much of the majority opinion as holds the trustees of the Internal Improvement Fund liable to pay for tax certificates issued upon the failure of land-owners to pay drainage taxes. The trustees in my opinion hold the certificated lands in trust for the bondholders and other creditors of the drainage district. The Compiled General Laws provide that lands upon which drainage taxes are delinquent may be sold, and if there is no private bidder, shall be "bid off" by the tax collector for the trustees to be held by them for the two-year period allowed for redemption "in like manner and with like effect as lands sold to the State for non-payment of State and County

taxes are held by the State." Comp. Gen. Laws 1927, par. 1541. In the case of a sale for non-payment of ordinary state and county taxes, if there are no private bidders, the land is bid off by the Tax Collector for the State. Section 972. Two years are allowed for redemption, but the owner may redeem at any time before the land is sold to another. *Hightower v. Hogan*, 69 Fla. 86, 68 So. 669. When land in the drainage district has been bid off for the trustees for the non-payment of drainage taxes, the title vests in the Trustees, but they hold it subject to the owner's right of redemption which continues until the land is sold. The sale must be for at least as much as accrued taxes, and, in the event of such a sale but not otherwise, the trustees are required to pay the delinquent drainage taxes. If they were purchasers in their own right, their obligation to pay would naturally arise as of the date of the tax sale, and would not be conditioned on a future sale. The provision of section 1, c. 9119, Laws of 1923, subjecting land within the drainage district held by the trustees to drainage taxes, refers to land owned by the Trustees in their own right, and not to land held in trust under tax certificates. If it had been the intention of the Legislature to bind the Trustees as purchasers of land upon which drainage taxes had not been paid, there should and doubtless would have been a plain and unequivocal provision to that effect. It is not to be inferred that the Legislature intended to impose a burden as great as it here contended for merely because it adopted existing provisions of law applicable to the holding and disposition of lands by the state upon default in the payment of ordinary taxes.

Upon the other questions involved; I concur in the opinion of the majority.

EXHIBIT "B".

**IN THE UNITED STATES DISTRICT COURT IN AND
FOR THE NORTHERN DISTRICT OF FLORIDA,
PENSACOLA DIVISION.**

IN EQUITY.

H. C. RORICK *et al.*, Plaintiffs,

vs.

**BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT,
etc., et al., Defendants.**

William Roberts of New York, Watson & Pasco & Brown of Pensacola, Florida, for plaintiffs.

Fred H. Kent of Jacksonville, Florida, for defendant Board of Commissioners of Everglades Drainage District.

George Cooper Gibbs, Attorney General; Marvin C. McIntosh, Assistant Attorney General; W. P. Allen, Assistant Attorney General; H. E. Carter, Assistant Attorney General, Tallahassee, Florida, for defendants Trustees Internal Improvement Fund.

**Before Foster, Circuit Judge, and Strum and Long,
District Judges.**

Per CURIAM:

This is the second appearance of this cause before a three judge statutory court. The cause was presented first to Honorable Nathan P. Bryan, United States Circuit Judge, and District Judges Sheppard and Strum. An application was made for interlocutory injunction which was granted by the three judge court upon the giving of bond. The plaintiffs having failed to give the bond no interlocutory injunction was issued. The opinion in the case was written by Judge Strum, 57 Fed. (2nd) 1048. The opinion was concurred in by United States District Judge Sheppard, United States Circuit Judge Bryan dissenting in part.

It appears that all of the questions presented at this time were passed on in the former hearing, and particularly those

questions reaching to the constitutionality of Acts of the Legislature of Florida enacted subsequent to the issuance and purchase of the bonds, the court holding that obligation of the contract is impaired when its value is diminished by subsequent legislation; that legislation providing for the issuance of the bonds, for the creation of sinking fund for the retirement of bonds, for the payment of interest, became a part of the bond contract; that statutes fixing new drainage district acreage taxes and creating administration districts from the proceeds were inoperative against holders of outstanding district bonds so far as such diversion reduced tax proceeds available for payment of bond interest and principal. In fact, the court held in substance that all subsequent legislation that impaired the bond contract was unconstitutional and void. This opinion, so far as the Federal Statutory Court was concerned, settled the main question now presented to this court, that the Trustees of the Internal Improvement Fund were not by subsequent legislation relieved of their obligation to pay subsequent special drainage taxes on lands in Everglades Drainage District bid off for said Trustees for non-payment of district drainage taxes.

The opinion in this case was written April 13th, 1932. Subsequent to that date supplemental bills have been filed combining of the several Acts of the Legislature undertaking to effect the bond issues and the manner provided for their payment, and the case is now before this court upon an application to reinstate the former interlocutory order and the granting of an interlocutory injunction at this time, and upon motions of defendants to dismiss the bill and supplemental bills.

The same questions presented here have been passed on by the Supreme Court of the State of Florida, particularly the question of whether or not the Internal Improvement Fund Trustees, should pay for tax certificates issued on privately owned land within Everglades Drainage District when such lands are bid off to Trustees.

Circuit Judge Bryan dissenting in part from the majority opinion, 57 Fed. (2d) 1048, quoted by Supreme Court of Florida,

State ex rel. Board of Commissioners of Everglades Drainage District vs. 150 So. 878,

"When land in the drainage district has been bid off for the trustees for the non-payment of drainage taxes, the title vests in the trustees, but they hold it subject to the owner's right of redemption which continues until the land is sold. The sale must be for at least as much as accrued taxes, and, in the event of such a sale, but not otherwise, the trustees are required to pay the delinquent drainage taxes. If they were purchasers in their own right, their obligation to pay would naturally arise as of the date of the tax sale, and would not be conditioned on a future sale. The provision of section 1, c. 9119, Laws of 1923, subjecting land within the drainage district held by the trustees to drainage taxes, refers to land owned by the trustees in their own right, and not to land held in trust under tax certificates. If it had been the intention of the Legislature to bind the Trustees as purchasers of land upon which drainage taxes had not been paid, there should and doubtless would have been a plain and unequivocal provision to that effect. It is not to be inferred that the Legislature intended to impose a burden as great as is here contended for merely because it adopted existing provisions of law applicable to the holding and dispositions of lands by the state upon default in the payment of ordinary taxes."

The Supreme Court of Florida, in passing upon this particular question, was unable to agree with the majority opinion in this case of *Rorick v. The Board of Commissioners of Everglades Drainage District*, 57 Fed. (2d), but adopted the dissenting opinion of United States Circuit Judge Bryan, holding that Internal Improvement Fund Trustees need not pay taxes on privately owned land within Everglades Drainage District when such lands are bid off to Trustees, until lands have been sold or redeemed, but Trustees hold certificated land and certificates in trust for Commissioners of Drainage District.

From an examination of the case of *Martin v. Dade Muck Land Company*, 95 Fla. 530, 116 So. 449; *State ex rel. Sherrill v. Milam, et al.*, 113 Fla. 491, 153 So. 100; *State ex rel. Board of Commissioners of Everglades Drainage District*

v. Sholtz, 112 Fla. 756, 150 So. 878; Everglades Drainage District et al. v. Florida Ranch and Dairy Corporation, 74 Fed. (2d) 914, it appears that the Supreme Court of Florida has passed upon the questions presented to this court adverse to plaintiff, and notwithstanding the decision in the Borick case, 37 Fed. (2d) 1048, this court is bound by the construction placed upon these statutes by the highest court of the state. Erie Railroad Company v. Harry J. Tompkins, J. S. Supreme Court.

The motion to reinstate the former interlocutory order is denied.

The motion for interlocutory injunction now sought is denied, and the bill and supplemental bills dismissed.

This the 2d day of August, A. D. 1938.

(Sgd.)

RUFUS E. FOSTER,
United States Circuit Judge.

(Sgd.)

LOUIE W. STRUM,
United States District Judge.

(Sgd.)

A. V. LONG,
United States District Judge.

Presented Nov. 22, 1938.

~ AUGUSTINE V. LONG,

Judge.

Received Aug. 4, 1938; Wm. Logan Hill, Clerk.

:(9462)

FILE COPY

Office - Supreme Court, U. S.

FILED

MAR 4 1939

CHARLES ELMORE CROPLEY
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM 1938

No. 554

H. C. BORICK, JOSEPH R. GRUNDY and
J. R. EASTON,

Appellants,

v.

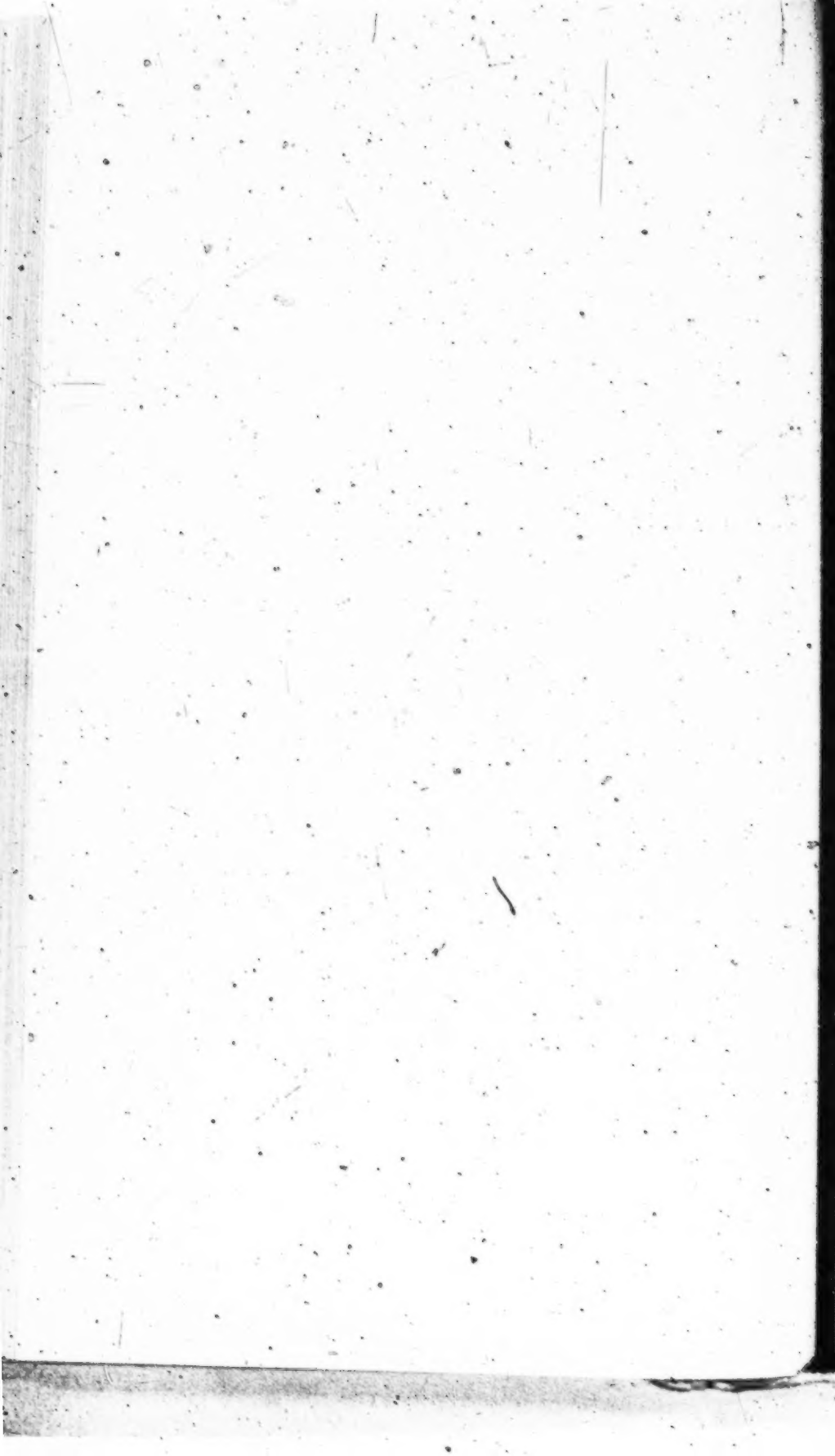
BOARD OF COMMISSIONERS of Everglades
Drainage District, etc., *et al.*,

Appellees.

APPEAL FROM DECREE OF SPECIALLY CONSTITUTED THREE-
JUDGE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF FLORIDA.

BRIEF FOR APPELLANTS

WILLIAM ROBERTS,
W. H. WATSON,
SAMUEL PASCO,
Counsel for Appellants.



SUBJECT INDEX

	PAGE
OPINIONS BELOW -----	2
JURISDICTION -----	3
STATEMENT -----	7
SPECIFICATION OF ERRORS TO BE URGED -----	19
ARGUMENT -----	21

I. The decree of the district court dismissing the bill and supplemental bills is erroneous in that a cause of action in equity is stated, since facts are alleged showing the existence of a contract and the impairment of its obligation by subsequently enacted statutes of the State of Florida ----- 22

(1) The subsequently enacted statutes impair the obligation of plaintiffs' contract in that, at a time when bonds are in default, they reduce substantially the acreage taxes levied for the payment of the bonds by the statutes which are part of the bond contract ----- 22

(2) The subsequently enacted statutes impair the obligation of plaintiffs' contract in that they divert to other purposes, without substitute, a substantial part of the acreage taxes levied, set apart and appropriated for the payment of bonds by the statutes which are part of the bond contract, at a time when such taxes are necessary for the payment of matured and maturing bonds and coupons ----- 33

(3) The subsequently enacted statutes impair the obligation of plaintiffs' contract in that they substitute for the payment of acreage taxes in money the payment of unpaid acreage taxes levied, set part and appropriated for the payment of

bonds by the statutes which are part of the bond contract, in bonds and coupons and thereby preclude the payment of bonds in money as provided in the statutes which are part of the bond contract -----

55

(4) The subsequently enacted statutes impair the obligation of plaintiffs' contract in that they provide that lands not purchased by other bidders at tax sales for nonpayment of acreage taxes should be bid off by the tax collectors for the Board of Commissioners of Everglades Drainage District, instead of for the Trustees of the Internal Improvement Fund of Florida as provided in the statutes which are part of the bond contract, since by such change the bid off lands are in substance exempted and the Trustees relieved from the payment of acreage taxes levied thereon for payment of the bonds under the statutes which form part of the bond contract, under which statutes such lands were not so exempted when bid off and held by the Trustees -----

58

II. The decree of the district court, granting the motions of defendants to dismiss the bill and supplemental bills, denying the application of plaintiffs for interlocutory decree enjoining the enforcement of the 1937 Everglades statute of Florida and denying the application of plaintiffs to reinstate the former interlocutory decree enjoining the enforcement of the 1929 and 1931 Everglades statutes, is erroneous -----

88

CONCLUSION -----

88

TABLE OF CONSTITUTIONS AND STATUTES CITED

Constitution of the United States:

Art. I, Sec. 10 ----- 2, 5, 19

Amendment XI ----- 2, 5

Amendment XIV ----- 86

Constitution of the State of Florida, Art. IX, Secs.

6, 10 ----- 85

Act of Congress, September 28, 1850; Ch. 84, Secs.

14, 9 Stat. 519; 43 U. S. C. A. 982, 983 ----- 8

Judicial Code, Sec. 266; Act of Congress, June 18,

1900, Ch. 309, Sec. 17, 36 Stat. 557; Act of Congress,

March 4, 1913, Ch. 160, 37 Stat. 1013; Act of Con-

gress, February 13, 1925, Ch. 229, Sec. 1, 43 Stat.

938; 28 U. S. C. A. Sec. 380 ----- 3

Chapter 610, Laws of Florida, 1855 ----- 8, 53, 66, 75, 77, 78

Chapter 6957, Laws of Florida, 1915 ----- 10, 33

Chapter 7305, Laws of Florida, 1917 ----- 9, 59, 64, 68

Chapter 7862, Laws of Florida, 1919 ----- 11, 33

Chapter 8412, Laws of Florida, 1921 ----- 41

Chapter 8413, Laws of Florida, 1921 ----- 11, 39

Chapter 9119, Laws of Florida, 1923 ----- 11, 17, 20, 23, 29

Chapter 10026, Laws of Florida, 1925 ----- 11, 17, 20, 23, 29

Chapter 10027, Laws of Florida, 1925 ----- 11

Chapter 12016, Laws of Florida, 1927 ----- 10

Chapter 13633, Laws of Florida, 1929 ----- 2, 4, 7, 12, 13,

15-18, 20-23, 33, 55, 88

Chapter 14717, Laws of Florida, 1931 ----- 2, 4, 7, 12,

13, 15-18, 20-23, 31-33, 38, 54-56, 58, 61, 81, 88

Chapter 17902, Laws of Florida, 1937 ----- 2, 4, 7, 11-13,

15, 17-23, 31-33, 54-56, 58, 88

Chapter 6456, Laws of Florida, 1913, as amended; Re-

vised General Statutes of Florida, 1920, Article 4,

Div. 1, Title 7, Secs. 1160-1188, pp. 702-749 (referred

to herein as "R. G. S.") ----- 8, 9, 12, 14, 33, 35,

39, 56, 58-59, 65

Sec. 1; R. G. S. Sec. 1160	PAGE 35
Sec. 2; R. G. S. Sec. 1161	35
Sec. 3; R. G. S. Sec. 1162	35
Sec. 4; R. G. S. Sec. 1163	35
Sec. 5; R. G. S. Sec. 1164; as amended by Chapter 8413, Laws of Florida, 1921; Chapter 9119, Laws of Florida, 1923; Chapter 10026, Laws of Florida, 1925	33, 35, 65-67, 74
Sec. 6; R. G. S. Sec. 1165	33, 35, 41, 43
Sec. 7; R. G. S. Sec. 1166	35
Sec. 8; R. G. S. Sec. 1167	35
Sec. 9; R. G. S. Sec. 1168	35
Sec. 10; R. G. S. Sec. 1169	14, 35
Sec. 11; R. G. S. Sec. 1170	35
Sec. 12; R. G. S. Sec. 1171	35, 59, 65, 67
Sec. 13; R. G. S. Sec. 1172	35
Sec. 14; R. G. S. Sec. 1173	35
Sec. 15; R. G. S. Sec. 1174	35
Sec. 16; R. G. S. Sec. 1175	35, 66, 67, 76
Sec. 17; R. G. S. Sec. 1176	35, 69
Sec. 18; R. G. S. Sec. 1177	35
Sec. 19; R. G. S. Sec. 1178; as amended by Chapter 8413, Laws of Florida, 1921; Chapter 9119, Laws of Florida, 1923; Chapter 10026, Laws of Florida, 1925	10, 11, 33, 35, 36, 51, 56, 65, 76
Sec. 20; R. G. S. Sec. 1179	14, 36, 56
Sec. 21; R. G. S. Sec. 1180	36
Sec. 22; R. G. S. Sec. 1181	36
Sec. 23; R. G. S. Sec. 1182	37, 56
Sec. 24; R. G. S. Sec. 1183	33, 37, 39, 51, 56, 65
Sec. 25; R. G. S. Sec. 1184	38, 51

TABLE OF CASES CITED

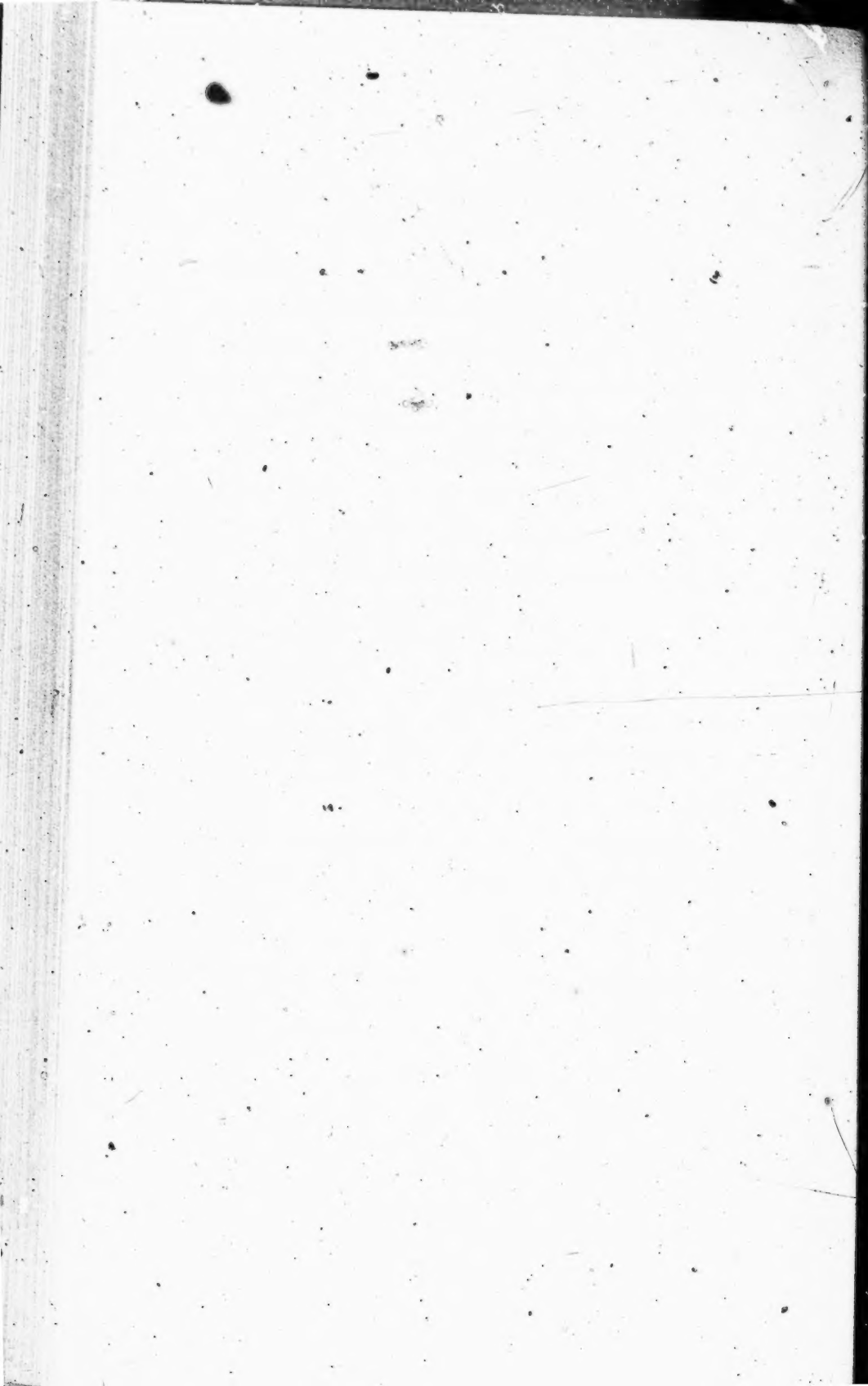
Antoni v. Greenhow, 107 U. S. 769	58
Appleby v. New York, 271 U. S. 364	82, 84
Arundel Corporation v. Griffin, 89 Fla. 128, 103 So. 422	6
Bannerman v. Catts, 80 Fla. 170, 85 So. 336	11, 35, 39
Barnitz v. Beverly, 163 U. S. 118	68
Bates v. Porter, 74 Cal. 224	42
Berry v. Hardee, 83 Fla. 531, 91 So. 685	35, 86
Bloxham v. Consumers' Elect. L. & St. Ry. Co., 36 Fla. 519	73
Board of Liquidation v. McComb, 92 U. S. 531	32, 34
Board of Supervisors v. United States, 4 Wall. 435	74
Boatright v. Jacksonville, 117 Fla. 477, 158 So. 42	33, 44
Brewster v. Gage, 280 U. S. 327	73
Chase v. United States, 256 U. S. 1	74
City of Clearwater v. State ex rel. United Mutual Co., 108 Fla. 623, 147 So. 459	44, 54
City of East St. Louis v. Zebley, 110 U. S. 321	50, 51
City of Jacksonville v. Bankers Life Co., 90 Fed. 2d 141 (C. C. A. 7)	40, 55
City of New Orleans v. Fisher, 91 Fed. 574, mod. 180 U. S. 185	40, 54
City of Winterhaven v. Summerlin, 114 Fla. 727, 154 So. 863	54
Clay County v. United States, 115 U. S. 616	50
Columbia County v. King, 13 Fla. 451	32, 46
Coombes v. Getz, 285 U. S. 434	84
Crummer v. City of Fort Pierce, 2 Fed. Sup. 737	57
Duval Cattle Co. v. Hemphill, 41 Fed. 2d 433 (C. C. A. 5)	34
Ecker v. Storm Sewer Drain. Dist., 75 Fed. 2d 870 (C. C. A. 5)	55
Erie R. Co. v. Tompkins, 304 U. S. 64	28, 31, 85

Everglades Drain. Dist. v. Florida Ranch & Dairy Corp., 74 Fed. 2d 914 (C. C. A. 5) reh. den. 75 Fed. 2d 1013	5, 27, 29
Everglades Sugar and Land Co. v. Bryan, Trustees, et al., 81 Fla. 75, 87 So. 68	35, 86
Ex parte Everglades Drainage District, 293 U. S. 521	6
Fazende v. City of Houston, 34 Fed. 95	54
First State Savings Bank v. Little River Drainage District, 122 Fla. 304, 165 So. 48	34, 45, 57
Frier v. State, 11 Fla. 300	57
Galena v. United States ex rel. Amy, 5 Wall. 705	32, 42, 74
George v. City of Asheville, 80 Fed. 2d 50 (C. C. A. 4)	55
Ginsberg & Son v. Popkin, 285 U. S. 204	44
Graham v. Folsom, 200 U. S. 248	33
Gray v. City of Santa Fe, 89 Fed. 406 (C. C. A. 10)	54
Gunter v. Atlantic C. L. R. R. Co., 200 U. S. 273	87
Harris v. City of Miami, 6 Fed. Sup. 305	57
Hayden v. Douglass County, 170 Fed. 24 (C. C. A. 7)	40, 54
Hidalgo County Road Dist. v. Morey, 74 Fed. 2d 101 (C. C. A. 5)	54
Hightower v. Hogan, 69 Fla. 86, 68 So. 669	79
Hopkins v. Clemson Agricultural College, 221 U. S. 636	87
Howard v. Bugby, 24 How. 461	68
Howard v. State ex rel. McGarry, 226 Ala. 215, 146 So. 414	57
Hubbell v. Leonard, 6 Fed. Sup. 145	40, 54
Hull v. State of Florida, 29 Fla. 79	68
Humphries v. State ex rel. Palm Beach Co., 108 Fla. 92, 145 So. 853	57
Hunt v. State ex rel. Citrus Growers Asso., 120 Fla. 753, 163 So. 83	58
Internal Improvement Fund v. Gleason, 15 Fla. 384	87
Interstate Busses Corp. v. Blodgett, 276 U. S. 245	6

	PAGE
<i>Jewel v. City of Superior</i> , 135 Fed. 19 (C. C. A. 7) cert. den. 198 U. S. 583 -----	40, 54
<i>Keefe v. Adams</i> , 106 Fla. 733, 143 So. 644 -----	34, 40, 45, 54
<i>Keefe v. City of St. Petersburg</i> , 5 Fed. Supp. 132 -----	57
<i>Klemm v. Davenport</i> , 100 Fla. 627, 129 So. 904 -----	46
<i>Lainhart v. Catts</i> , 73 Fla. 735, 75 So. 47 -----	8, 11, 34, 35, 39, 42
<i>Lord v. Veazie</i> , 8 How. 251 -----	84
<i>Louisiana v. Jumel</i> , 107 U. S. 711 -----	40
<i>Louisiana v. New Orleans</i> , 215 U. S. 170 -----	32
<i>Louisiana v. Pillsbury</i> , 105 U. S. 278 -----	32, 34, 40, 45
<i>Maenhaut v. New Orleans</i> , 30 Woods 1, Fed. Cas. 8940 -----	54
<i>Martin v. Dade Muck' Land Co.</i> , 95 Fla. 530, 116 So. 449 -----	27, 28, 34, 62, 78, 86, 87
<i>McCullough v. Virginia</i> , 172 U. S. 102 -----	58, 84
<i>McFeeley v. Com'r of Internal Revenue</i> , 296 U. S. 102 -----	73
<i>McGee v. Mathis</i> , 4 Wall 143 -----	64
<i>McNee v. Wall</i> , 4 Fed. Sup: 496, rev'd 296 U. S. 547 -----	57
<i>McNee v. Wall</i> , 13 Fed. Sup. 326, aff'd 87 Fed. 2d 768 (C. C. A. 5) -----	57
<i>Miller v. Hamilton</i> , 233 Fed. 402 (C. C. A. 8) -----	40, 54
<i>Mills County v. Burlington & M. R. R. Co.</i> , 107 U. S. 557 -----	64
<i>Mobile v. Watson</i> , 116 U. S. 289 -----	32, 40
<i>Moore v. Branch</i> , 5 Fed. Sup. 101 -----	57
<i>Moore v. Otis</i> , 275 Fed. 747 (C. C. A. 8) -----	40, 54
<i>Municipality of Pensacola v. Lehman</i> , 57 Fed. 2d 324 (C. C. A. 5) -----	74
<i>National Lead Co. v. United States</i> , 252 U. S. 140 -----	72
<i>Nelson v. St. Martin's Parish</i> , 111 U. S. 716 -----	32
<i>New York Rapid Transit Corp. v. New York</i> , 303 U. S. 573 -----	84
<i>New Orleans v. Fisher</i> , 180 U. S. 185 -----	40

	PAGE
Olmstead <i>v.</i> Superior, 155 Fed. 172	54
O'Neill <i>v.</i> Leamer, 239 U. S. 244	6
Polk Co. <i>v.</i> Glover, 83 L. Ed. 73	6, 22
Ralls County Court <i>v.</i> United States, 105 U. S. 733	32
Richardson <i>v.</i> Hardee, 85 Fla. 510, 96 So. 290	35
Rorick <i>v.</i> Board of Commissioners, 27 Fed. 2d 377	40
Rorick <i>v.</i> Board of Commissioners, 57 Fed. 2d, 1048 3, 23, 27, 30, 32, 34, 38, 65, 77, 78, 82	
Rorick <i>v.</i> Board of Commissioners, 24 Fed. Sup. 458	3, 27
Royall <i>v.</i> Virginia, 116 U. S. 572	58
S. A. L. Ry. Co. <i>v.</i> R. R. Commissioners, 100 Fla. 1027	74
Seibert <i>v.</i> Lewis, 122 U. S. 284	40
Smith <i>v.</i> Boise, 18 Fed. Sup. 385	40, 55
Spielman Motor Sales Co. <i>v.</i> Dodge, 295 U. S. 89	6
State <i>v.</i> Allen, 83 Fla. 214, 91 So. 104	39
State <i>v.</i> Harris, 119 Fla. 375, 161 So. 374	34, 54
State ex rel. Board of Commissioners <i>v.</i> Sholtz, 112 Fla. 756, 150 So. 878	27, 28, 80, 81, 83
State ex rel. Dos Amigos, Inc. <i>v.</i> Lehman, 100 Fla. 1313	46
State ex rel. Keefe <i>v.</i> Cotton, 106 Fla. 733, 143 So. 644	42, 45
State ex rel. Lawler <i>v.</i> Knott, 129 Fla. 136, 176 So. 113; 130 Fla. 424, 178 So. 420	34, 46, 47
State ex rel. Stieff <i>v.</i> Bradshaw, 39 Fla. 137	68
State ex rel. Sherrill and Vann <i>v.</i> Milam, 113 Fla. 491, 559, 587; 153 So. 100, 125, 136 16, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 49	
State ex rel. Sovereign Camp <i>v.</i> Boring, 121 Fla. 781, 164 So. 859	33
State ex rel. Yonge <i>v.</i> Board of Commissioners, 184 So. 237	34, 48
Sterling <i>v.</i> Constantin, 287 U. S. 378	6, 87
Stratton <i>v.</i> St. Louis Southwestern Ry. Co., 282 U. S. 10	6

	PAGE
Suncrest Lumber Co. v. North Carolina Public Park Comm., 29 Fed. 2d 823 (C. C. A. 4)-----	6
Tanner v. Little, 240 U. S. 369-----	87
Thompson v. Emmett Irrig. Dist., 227 Fed. 560 (C. C. A. 9)-----	54
Trustees II Fund v. Bailey, 10 Fla. 112-----	52, 63, 86, 87
Trustees v. Root, 63 Fla. 666, 58 So. 371-----	8, 65, 87
Trustees v. Root, 59 Fla. 648, 51 So. 535-----	87
United States v. Chase, 135 U. S. 255-----	44
United States v. Missouri P. R. Co., 278 U. S. 269-----	72
United States v. Shreveport Grain Co., 287 U. S. 77-----	73
Vickrey v. Sioux City, 104 Fed. -64-----	54
Village of Kent v. United States, 113 Fed. 232 (C. C. A. 6)-----	34, 42, 54
Virginia v. West Virginia, 246 U. S. 565-----	74
Von Hoffman v. City of Quincy, 4 Wall 535-----	32, 34, 54
Wilson v. Mitchell, 43 Fla. 107, 30 So. 703-----	87
Wolff v. New Orleans, 103 U. S. 358-----	32, 34
Yonge v. Franklin, 184 So. 237-----	34, 48



IN THE
Supreme Court of the United States

OCTOBER TERM 1938

No. 554

H. C. RORICK, JOSEPH R. GRUNDY and
J. R. EASTON,

Appellants,

v.

BOARD OF COMMISSIONERS of Everglades
Drainage District, etc., *et al.*,

Appellees.

APPEAL FROM DECREE OF SPECIALLY CONSTITUTED THREE
JUDGE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF FLORIDA.

BRIEF FOR APPELLANTS

This is an appeal from a decree of a specially constituted three judge district court for the Northern District of Florida, dated August 2, 1938 (R. 246-8), in a suit in equity, in which plaintiffs, appellants herein, as holders of bonds issued by the Board of Commissioners of Everglades Drainage District, a tax district in the State of Florida, sought to enjoin the Board of Commissioners of said District, the Trustees of the Internal Improvement Fund of the State of Florida, and the tax assessors and tax collectors of said District from the enforcement and execution of statutes of the State of Florida enacted in

the years 1929, 1931 and 1937, after the said bonds had been issued and were outstanding, upon the ground that said statutes, in violation of section 10 of Article I of the Constitution of the United States, impair the obligation of the contract between plaintiffs as bondholders of the District and the Board of Commissioners of said District, and that said statutes, in violation of the 14th Amendment to the Constitution of the United States deprive the plaintiffs of their property without due process of law. The contract between plaintiffs, appellants herein, and the Board of Commissioners of said District is represented by the bonds issued by said Board of Commissioners and held by the plaintiffs and by the statutes of the State of Florida which authorized the issue of said bonds, levied acreage taxes upon the lands in said District for the payment of the bonds, and set aside, appropriated and pledged the taxes in the hands of a separate custodian for such payment.

By the decree under review (R. 246-8), the specially constituted district court denied the motion of plaintiffs, appellants, for an interlocutory injunction, restraining the action of the defendants, appellees, in the enforcement and execution of Chapter 17902, Laws of Florida of 1937, denied plaintiffs' motion to reinstate a former interlocutory decree enjoining the enforcement of Chapter 14717, Laws of Florida of 1931, and granted defendants' motion to dismiss the bill of complaint and supplemental bills.

Opinions Below

The opinion of the specially constituted district court on the application of plaintiffs, appellants to enjoin the enforcement of the statute of Florida enacted in the year 1937, and on the application of defendants, appellees, to dismiss the bill of complaint and supplemental bills, which

applications resulted in the decree from which this appeal is taken, rendered August 2, 1938 (R. 246-8); is reported in 24 Fed. Supp. 458. The opinion of the specially constituted district court on the application of plaintiffs, appellants to enjoin the enforcement of the statute of the State of Florida enacted in the year 1931, which application was granted (R. 79-83), and on the motions of defendants made at that time to dismiss the bill of complaint and supplemental bill, which motions were denied (R. 83), was rendered April 13, 1932, and is reported in 57 Fed. 2d 1048 (R. 84-110).

Jurisdiction

The decree of the specially constituted district court from which the present appeal is taken (R. 246-8) was entered on August 4, 1938. An order and decree was made without opinion, by the district court on September 2, 1938; overruling and denying plaintiffs' application for rehearing (R. 266). The jurisdiction of this court is invoked under Judicial Code, section 266, as amended by Acts of March 4, 1913, c 160 and Act of February 13, 1925, c 229 Sec. 1; 28 USCA, Sec. 380. The petition for appeal was granted by the District Court on November 22, 1938 (R. 267-8).

The rights under the Federal Constitution relied upon in this appeal and in this brief were raised in the original and supplemental bills of complaint (R. 55) and in the application of plaintiffs, appellants for interlocutory injunction restraining the enforcement of statutes of the State of Florida by state officers in violation of the Constitution of the United States. The constitutional questions arising from the allegations of the bill of complaint and supplemental bills and the application by plaintiffs for interlocutory

injunction are whether certain statutes of the State of Florida enacted in the respective years 1929, 1931 and 1937 impair the obligation of the contract of plaintiffs, appellants with the Board of Commissioners of Everglades Drainage District, represented by the bonds issued by said Board of Commissioners and held and owned by the plaintiffs, and by the statutes of the State of Florida authorizing the issue of said bonds, in the essential respects hereinafter more fully set forth, including the making of substantial reductions in the amount of the acreage taxes levied by the statutes under which the bonds were issued for the payment of the bonds and necessary for their payment, by diverting from the payment of the bonds a substantial part of the acreage taxes which had been appropriated and set aside for their payment, by destroying the sinking fund for the payment of the principal of the bonds, by authorizing the use of bonds and coupons of the District instead of money in the redemption of tax sale certificates and tax liens on tax delinquent lands, representing overdue and unpaid acreage taxes, and by relieving the Trustees of the Internal Improvement Fund of the State of Florida from the obligation to pay acreage taxes on lands bid off for them at tax sales as provided in the statutes authorizing the issue of the bonds.

It is alleged in the bill of complaint and supplemental bills that the bonds of the District held by the plaintiffs and the statutes authorizing the issue of the bonds and levying the acreage taxes for their payment constitute a contract between the plaintiffs and the Board of Commissioners of the District (R. 7, 13, 19, 31, 58), and it is so provided in the said statutes themselves; that subsequent statutes of the State of Florida enacted in the years 1929, 1931 and 1937, after the contract between plaintiffs

and the Board of Commissioners had been made, violate the Federal Constitution by impairing the obligation of plaintiffs' contract and by depriving plaintiffs of their property without due process of law, in reducing substantially the taxes levied by the statute for the payment of the bonds (R. 31-33, 58-60, 216-217), in diverting the proceeds of the taxes from the payment of the bonds (R. 59, 218) and in the various other respects alleged in the bill of complaint and supplemental bills. A primary purpose of the bill and supplemental bills of complaint is to restrain officers of the State of Florida from enforcing and executing said statutes of the State upon the grounds that said statutes violate the Federal Constitution. The officers of the State of Florida whose action is sought to be restrained are the State Treasurer, who is the custodian of the proceeds of the acreage taxes levied for the payment of the bonds, and appropriated and set aside in his hands for that purpose; the Trustees of the Internal Improvement Fund of the State of Florida, composed of the Governor of the State, the Attorney General of the State, and the three other principal State officers, who are sought to be enjoined, from enforcing and executing the subsequent State statutes upon the ground that such statutes relieve the Trustees of the Internal Improvement Fund from the obligation of paying acreage taxes on the lands bid off for them at tax sales; the Board of Commissioners of Everglades Drainage District who are the agents of the State of Florida for the purpose of administering in this Tax District the swamp and overflow lands granted to the State of Florida by the United States with the statutory duty of draining and reclaiming said lands.

Everglades Drainage District v. Florida Ranch & Dairy Corporation, 74 Fed. 2d 914 (C. C. A. 5C) is distinguish-

able since the Court of Appeals in that case held that the plaintiff therein had an adequate remedy at law, and it is also distinguishable on the ground that neither the state treasurer nor the Trustees of the Internal Improvement Fund of the State of Florida were parties to that suit; *Ex Parte Everglades Drainage District*, 293 U. S. 521, is the same case on application for writ of mandamus. In *Stratton v. St. Louis Southwestern Ry. Co.*, 282 U. S. 10, the appeal in a three judge case was dismissed because there was an adequate remedy at law.

In *Arundel Corporation v. Griffin*, 89 Fla. 128, 103 So. 422, the Court stated in respect of Everglades Drainage District:

“The Board created by the above quoted statute is an agency of the State and the authority conferred upon the Board is exercised for the State and not for a subdivision of the State or for any private purpose or company.”

The Everglades Drainage District was formed for the purpose of draining and reclaiming the lands therein and protecting them from the effects of water, for agricultural and sanitary purposes, and for the public convenience and welfare; and for the public utility and benefit, as was the drainage district involved in *O'Neill v. Leamer*, 239 U. S. 244.

The jurisdiction of the Supreme Court to hear this appeal is sustained by the holdings in *Stratton v. St. Louis Southwestern Ry. Co.*, 282 U. S. 10; *Sterling v. Constantin*, 287 U. S. 378; *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89; *Interstate Busses Corp. v. Blodgett*, 276 U. S. 245; *Suncrest Lumber Co. v. North Carolina Public Park Commission*, 29 Fed. 2d 823 (C. C. A. 4); *Polk Co. v. Glover*, 83 L. Ed. 73.

Statement

This suit in equity was instituted by plaintiffs as holders of bonds of Everglades Drainage District on May 19, 1931 (R. 2) for the purpose of having adjudged unconstitutional and of enjoining the enforcement of a statute of the State of Florida enacted on June 10, 1929 (Chapter 13,633, Laws of Florida of 1929) on the ground that the statute impaired the obligation of plaintiffs' contract with the Board of Commissioners of the District and deprived plaintiffs of their property without due process of law. Upon the same grounds and for the same purpose the first supplemental bill was filed on July 4, 1931 (R. 55) in respect of the statute of the State of Florida enacted on May 20, 1931 (Chapter 14,717, Laws of Florida of 1931), and the second supplemental bill was filed on July 19, 1937 (R. 208) in respect of the statute of the State of Florida enacted on June 10, 1937 (Chapter 17,902, Laws of Florida of 1937):

The contract which plaintiffs allege in the bill and supplemental bills is impaired by the statutes of 1929, 1931 and 1937 of the State of Florida is between the plaintiffs as bondholders of Everglades Drainage District and the Board of Commissioners of that District, and is represented by the bonds of the District held and owned by plaintiffs, both original bonds and refunding bonds (R. 11-12), payable in gold coin or its lawful equivalent in money of the United States, and by the statutes of the State of Florida which authorized the issue of the bonds, levied acreage taxes upon the lands within the District for the payment of the bonds, and appropriated and set apart the acreage taxes in the hands of the State Treasurer, as a separate custodian, for the payment of the bonds.

The Everglades Drainage District was established by a statute of the State of Florida (R. 3, 16-17) (Chapter 6456, Laws of Florida of 1913), as a tax district, in the year 1913 for the purpose of reclaiming and improving the lands in the District for the public welfare (*Lainhart v. Catts*, 73 Fla. 735, 75 So. 47). It consisted of approximately 4,000,000 acres of land in southern Florida contiguous to Lake Okechobee, the principal part of which consists of swamp and overflowed lands granted by the United States (R. 3) to the State of Florida in the year 1850 (Act of Congress of September 28, 1850, United States Statutes at Large, Vol. 9, p. 519), subject to the obligation of the State of Florida to the United States under the granting statute to reclaim the same as therein provided (R. 4). By statute enacted in 1855 (Chapter 610 of the Laws of Florida of 1855), the State of Florida vested in the Trustees of the Internal Improvement Fund the title to said swamp and overflowed lands so granted to the State by the United States with provisions in said statute as to the powers and duties of said Trustees in respect of said lands (R. 4-5). The Trustees of the Internal Improvement Fund have always consisted of the five principal state officers, including the Governor, the Attorney General, the Comptroller, the State Treasurer and the Commissioner of Agriculture (R. 85).

The Trustees of the Internal Improvement Fund holding the title to the said lands as fiduciaries for the State of Florida were directly in charge of the reclamation and management thereof, and in the performance of their duties sold some of the lands, made gifts of some to railroad companies and others, and retained much of the lands which the Trustees improved in accordance with their ideas and the funds available to them for that purpose (*Trustees v. Root*, 63 Fla. 666, 58 So. 371). After this long period of trustee

management the policy was adopted by the State in the year 1913 of forming a District (Everglades Drainage District) for the purpose of improving said lands, one of the primary purposes of which was to sell bonds of the District to the public, the proceeds thereof to be used in reclaiming and improving the lands in the District more expeditiously than the Trustees were able to do out of their own funds (R. 85).

The statutes of the State of Florida (Chapter 6456, Laws of Florida of 1913, as amended) under which the District was formed and pursuant to which the bonds of the District were authorized to be issued and were issued, divide the lands of the District into zones, and levy graduated acreage taxes upon such lands, appropriate and set aside the taxes in the hands of a separate custodian for the payment of the bonds, and provide that in the event taxes on the lands are unpaid, the particular lands on which the taxes are unpaid shall be offered for sale by the tax collectors of the counties in which such lands are located and if they are not purchased at such sale for the amount of the defaulted taxes and costs, they shall be bid off for the Trustees of the Internal Improvement Fund who, plaintiffs contend, must thereafter pay the acreage taxes levied by the statutes on the bid off lands. During the period in which the bonds of the District were being issued and for some time thereafter the Trustees did pay the taxes on the bid off lands (R. 31). The provision for bidding off the lands for the Trustees was made by an amendment enacted in 1917 (Chapter 7305, Laws of Florida of 1917), at the time when the first bonds of the District were sold and was a substitute for a provision theretofore contained in the Everglades statute of 1913, that such lands should be bid off for the Board of Commissioners of the District (R. 20, 102-3). At the time the District was formed in 1913 about one-fourth of all the lands

in the District were owned by the Trustees of the Internal Improvement Fund (R. 5).

Section 19 of the original Everglades statute of 1913 authorized the Board of Commissioners to issue bonds not exceeding six million dollars principal amount outstanding at any time. That section has been amended from time to time to authorize the issuance of not exceeding \$14,250,000 principal amount of bonds exclusive of those authorized but never issued by Chapter 12016, Laws of 1927, now repealed (R. 8-9). No bonds were issued until section 19 of the original statute was amended by Chapter 6957, Laws of 1915 (R. 12), to provide that "nothing herein contained shall be deemed a limitation of the right of the legislature to authorize additional bonds of said board, payable from drainage taxes within said district, provided any such additional authority shall be accompanied by the levy and imposition of additional taxes or assessments sufficient to meet the payment of the bonds authorized and interest thereon as the same shall become due; such payment to be provided for by a sinking fund as herein required, and such additional bonds shall constitute an obligation of equal dignity with the bonds herein authorized and equally with the bonds herein authorized may be entitled to payment from all drainage taxes then or thereafter imposed upon the lands within said district without preference to any bonds or series of bonds over any other bonds or series of bonds" (Chapter 6456, Sec. 19 as amended; Revised General Statutes of Florida of 1920, Sec. 1178). That section, as so amended, remained in effect during the entire period in which bonds of the District were issued (R. 88).

As future issues were authorized the acreage taxes were increased to provide funds for the payment of the additional bonds. Under section 19 of the 1913 Everglades

statute as amended, bonds aggregating \$3,500,000 were issued before 1918, which have all been retired in part by payment and in part by refunding bonds issued by authority of Chapter 10027, Laws of Florida of 1925. By authority of successive amendments of section 19 of the original 1913 statute, additional bonds have been issued under Chapter 7862 of 1919, Chapter 8413 of 1921, and Chapter 9119 of 1923, codified as section 1178 Revised General Statutes of Florida, 1920, and section 1553 Compiled General Laws, 1927. Chapter 10026 of 1925, authorized \$3,000,000 principal amount of additional bonds which have never been issued. Chapter 10027 of 1925 authorized the issuance of refunding bonds, which have been issued to the extent of \$3,842,000 and used to refund in part the bonds issued under the 1913 statute as amended (R. 8-9, 12-13, 89). There are now outstanding approximately \$9,919,000 (R. 14) principal amount of bonds including the refunding bonds. No question has been raised as to the validity of the bonds or as to the validity of the statutes authorizing the issue thereof, these questions having already been determined by the Florida Supreme Court in several cases, including *Lainhart v. Catts*, 73 Fla. 735, 75 So. 47, and *Bannerman v. Catts*, 80 Fla. 170, 85 So. 336.

The bonds were of serial maturities, and the interest on the bonds and the serial maturities was paid currently until January 1, 1931, when default was made in the payment of the interest on all bonds and the principal of bonds which became due on that date (R. 11). At the time the second supplemental bill was filed attacking the 1937 Everglades statute as unconstitutional, the amount of principal alone then due and unpaid on the outstanding bonds was in excess of the sum of \$2,938,357 (R. 216-217). The plaintiffs are the owners of substantial amounts of bonds

both original and refunding, the interest and principal of which were in default and are now in default (R. 11-12). The original 1913 Everglades statute provides that the "faith and credit" of the Board of Commissioners shall be pledged by said bonds (Chapter 6456, Sec. 21, as amended; R. G. S., Sec. 1180). Each bond itself pledges the faith, credit and resources of the District for such payment thereof (R. 53).

Plaintiffs allege in the bill and supplemental bills the nature of the contract between the plaintiffs as bondholders and the Board of Commissioners of the District, including the pertinent provisions of the statutes which authorized the issue of the bonds, the levy of the acreage taxes and the appropriation thereof for the payment of the bonds; plaintiffs also allege the various respects in which the statutes of the years 1929, 1931 and 1937 impair the obligation of the plaintiffs' contract and deprive them of their property without due process of law. The substantial rights which the plaintiffs allege they have under their bond contract and the impairment thereof by the statutes of 1929, 1931 and 1937 are as follows:

1. The plaintiffs allege, in substance, that the statutes which authorized the issue of the bonds of the District levied acreage taxes for the payment of the bonds upon the lands in the District at rates specified in the statutes, that such taxes were necessary for the payment of the bonds and were included in the bond contract (bill, R. 16-17; 1 sup. bill, R. 58-59; 2 sup. bill, R. 216-217).

The plaintiffs allege that the subsequent statutes of the years 1929, 1931 and 1937 impair the obligation of plaintiffs' contract in respect of the foregoing right to the acreage taxes by reducing substantially the acreage taxes levied for the payment of the bonds, without substi-

tate and without the consent of plaintiffs, at the time when plaintiffs' bonds were in default (R. 11-12), and other bonds were in default, and the reduced taxes were not adequate to pay the principal and interest of the bonds then in default and as they would mature in the future. The total amount of the acreage taxes levied upon the lands within the District by the statutes under which the bonds were issued for the year 1937 was approximately \$2,250,000 and the total amount of acreage taxes levied by the subsequent statute of 1937 for the same year is approximately \$595,000 (R. 217; bill, R. 31-33; 1 sup. bill, R. 58-59; 2 sup. bill, R. 216-217, 219-220).

This impairment of the obligation of plaintiff's contract involves alone the reduction of the acreage taxes to a point where they are substantially inadequate to pay the principal and interest of the bonds.

2. The plaintiffs allege in substance that the statutes which authorize the issue of the bonds levied the acreage taxes for the payment of the bonds, appropriated and set aside the acreage taxes in the hands of a separate custodian for the payment of the bonds, and made a condition to the issue of additional bonds that additional taxes sufficient to pay the bonds should at the same time be levied by the statutes. Additional bonds were issued and additional taxes were levied (bill, R. 16-19; 1 sup. bill, R. 58; 2 sup. bill, R. 216-218).

The plaintiffs allege that the subsequent statutes of the years 1929, 1931 and 1937 impair the obligation of plaintiffs' contract in respect of the foregoing right to the acreage taxes by diverting substantially the proceeds of the taxes to purposes other than the payment of the bonds, without substitute and without the consent of plaintiffs, at a time when plaintiffs' bonds were in default, and other

bonds were in default, and the remaining proceeds of acreage taxes applicable to the payment of bonds were not adequate to pay the principal and interest of the bonds in default and as they would mature in the future (bill 31-33, 39-40; 1 sup. bill, R. 58-59; 2 sup. bill, R. 216-220).

This impairment of the obligation of plaintiffs' contract involves the diversion of the reduced taxes to purposes other than the payment of the bonds so as to leave available substantially less taxes than were necessary for that purpose.

3. The plaintiffs allege in substance that the statutes which authorize the issue of the bonds and the bonds themselves require payment of the principal and interest of the bonds in lawful money of the United States (Chapter 6456; Sec. 20; R. G. S., Sec. 1179) and do not authorize the payment of acreage taxes levied for the payment of the bonds in anything but lawful money of the United States (Chapter 6456, Sec. 10 as amended; R. G. S., Sec. 1163 (bill, R. 13-14, 16-17, 33-34; 1 sup. bill, R. 56; 2 sup. bill, R. 216-217)).

The plaintiffs allege that the subsequent statutes of the years 1931 and 1937 impair the obligation of plaintiffs' contract in respect of the foregoing right to have the principal and interest of the bonds paid in money, by providing that the acreage taxes may under the conditions provided in the subsequent statutes be paid by cancellation of bonds and coupons of the District (1 sup. bill, R. 63-64; 2 sup. bill, R. 222-223).

This impairment of the obligation of plaintiffs' contract involves the use of bonds and coupons of the District instead of money in the payment of acreage taxes when the taxes if paid in money were not sufficient to pay

the matured and maturing principal and interest of the bonds in full.

4. The plaintiffs allege in substance that the statutes which authorize the issue of bonds require that in the event taxes on the lands in the District are unpaid, the particular lands on which the taxes are unpaid shall be offered for sale by the tax collectors of the counties in which such lands are located and if they are not purchased at such tax sale for the amount of the defaulted taxes and costs, they shall be bid off for the Trustees of the Internal Improvement Fund who must thereafter pay the acreage taxes thereon (bill, R. 15, 19-31; 1 sup. bill, R. 55-56; 2 sup. bill, 209-210).

The plaintiffs allege that the subsequent statutes of the years 1931 and 1937 impair the obligation of plaintiffs' contract in respect of the foregoing right to have the Trustees pay the taxes on the bid off lands by providing that the lands at such tax sales shall be bid off for the Board of Commissioners instead of the Trustees of the Internal Improvement Fund and that thereby the lands are freed from the obligation to pay the acreage taxes and the Trustees are released from the obligation to pay such taxes (1 sup. bill, R. 60-63).

This impairment of the obligation of plaintiffs' contract involves the release of certain lands from the payment of acreage taxes, and the release of the Trustees of the Internal Improvement Fund from the obligation to pay acreage taxes levied upon such lands.

The questions on this appeal arise through the application of plaintiffs, appellants for interlocutory injunction to restrain the enforcement of the subsequent statutes of the years 1929, 1931 and 1937, and through the motions of defendants, appellees, to dismiss the bill and supplemental

bills of complaint. On the motion of plaintiffs appellants to have declared unconstitutional the statutes of the years 1929 and 1931 and to enjoin their enforcement, and on the motion of defendants appellees to dismiss the bill of complaint attacking the 1929 statute and the first supplemental bill attacking the 1931 statute, the federal district court, on September 17, 1932 entered an interlocutory decree dated September 6, 1932, restraining the enforcement of the statutes of 1929 and 1931 and on September 17, 1932, entered an order denying the motion of defendants to dismiss the bill of complaint and the first supplemental bill. The court filed an elaborate opinion supporting the decree dated September 6, 1932, in which it set forth at length the respects in which the statutes of the years 1929 and 1931 had impaired the obligation of plaintiffs' contract. Thereafter the defendants appellants filed their answers to the bill of complaint and first supplemental bill. Later, by order dated February 23, 1933, the interlocutory decree entered on September 17, 1932 was vacated solely through failure of plaintiffs to file the bond required by said decree (R. 205).

After the determination of the district court, the Board of Commissioners persisted in their refusal to take the action necessary to have the taxes forming part of the bond contract extended on the tax rolls in order that the tax collectors might collect the taxes, and then applied to payment of the bonds. It was necessary to bring mandamus proceedings to have the Board of Commissioners take the necessary action. In *Sherrill and Vann v. Milam, et al.*, 113 Fla. 491, 559, 587 (decided April, 1933, November, 1933 and February, 1934) in such a mandamus proceeding, the Supreme Court of Florida held that the 1931 statute was unconstitutional, that the rates of acreage taxes therein contained were not the rates required to be extended on the tax

rolls but the rates levied by the 1925 statute were the proper rates, and not as the federal district court had determined in its decree of September 6, 1932, the rates contained in the statute of 1923 (Chapter 9119), and the court gave judgment that peremptory writ of mandamus to that effect issue.

Later a statute of the State of Florida was enacted on June 10, 1937 (Chapter 17902, Laws of Florida of 1937), which still further impaired the obligation of plaintiffs' contract. The plaintiffs' second supplemental bill filed July 19, 1937 was directed against the 1937 statute on the ground that it impaired the obligation of the contract and application was made by plaintiffs for an interlocutory decree enjoining the enforcement of the 1937 statute; at the same time the defendants, appellees, made a motion to dismiss the bill of complaint and the first and second supplemental bills of complaint and both applications were heard by the court at the same time. The district court, which in 1932 had granted the plaintiffs' motion to enjoin the enforcement of the statutes of 1929 and 1931 upon the ground that they impaired the obligation of plaintiffs' contract, and had entered the decree of September 6, 1932 to that effect, and had denied the motion of defendants-appellees to dismiss the bill of complaint and first supplemental bill, in the year 1938 denied plaintiffs' motion to have the 1937 statute declared unconstitutional, which is alleged to have impaired beyond the statutes of 1929 and 1931 the obligation of plaintiffs' contract, and granted the motion of defendants-appellees to dismiss the complaint, the first supplemental bill of complaint and the second supplemental bill of complaint, and there was entered the decree dated August 12, 1938, from which the present appeal is taken. The district court denied the petition for rehearing without opinion.

It is alleged by the plaintiffs, appellants, and it is admitted by the motion of defendants, appellees to dismiss that each of the statutes of 1929, 1931 and 1937 was enacted by the legislature upon the application and recommendation of the Board of Commissioners of the District (R. 31, 56-57, 59, 212-213). When the Board of Commissioners made such recommendations in respect of the 1929 statute, it was composed entirely of the five state officers, including the Governor and the Attorney General who were and always have been the Trustees of the Internal Improvement Fund; when the recommendation was made as to the enactment of the 1931 Act, the state officers constituted five of the ten members of the Board of Commissioners, and when the recommendation was made as to the 1937 statute, the state officers had caused themselves to cease to be members of the Board, and the Board was then composed of landowners in the District appointed by the Governor. These state officers as such recommended the enactment of these statutes after they had administered the affairs of this District as state officers during the whole period in which the bonds of the District were sold to the public and their proceeds applied to the making of improvements in the District.

The questions raised on this appeal involve only the allegations of the bill of complaint and supplemental bills and the interpretation of the state statutes, since the questions were all raised upon an application for interlocutory decree enjoining enforcement of the statutes on the ground of their unconstitutionality, and by the motions of defendants, appellees to dismiss the bill of complaint and the first and second supplemental bills.

Specifications of Errors to be Urged

The District Court erred:

1. In making and entering its final judgment and decree of August 2, 1938, dismissing the bill of complaint and supplemental bills of complaint herein.

2. In denying the application of plaintiffs to reinstate the interlocutory injunction granted by it on September 6, 1932.

3. In denying the application for interlocutory injunction restraining the enforcement of Chapter 17902, Laws of 1937.

4. In making the order of September 2, 1938, overruling and denying plaintiffs' application and petition for rehearing.

5. In holding that the Supreme Court of Florida had passed upon all questions presented in the bill of complaint and supplemental bills adversely to plaintiffs.

6. In holding in effect that as to all questions presented by the bill of complaint and supplemental bills the Court is bound by the construction placed upon the statutes by the Supreme Court of Florida even if there is involved a substantial Federal question under Section 10 of Article 1 of the Constitution of the United States as to the alleged impairment of the obligation of plaintiffs' contract.

7. In holding itself bound by the State Court construction as to the relation and duties, in matters pertaining to the payment of taxes, of the Trustees of the Internal Improvement Fund, in respect of lands in Everglades Drain-

age District bid off and certified to the Trustees at tax sales for defaulted taxes.

8. In holding in effect that the Everglades statutes of the years 1929, 1931 and 1937 of the State of Florida, by reducing the acreage taxes levied and pledged for the payment of the bonds of the District below the rates fixed by the statutes of the years 1923 and of 1925, did not impair the obligation of the contract between plaintiffs as holders of bonds of Everglades Drainage District and the Board of Commissioners of said District.

9. In holding in effect that the Everglades statutes of the years 1931 and of 1937 of the State of Florida, by diverting and appropriating a portion of the proceeds of acreage taxes to purposes other than the payment of the bonds then in default did not impair the obligation of the contract between plaintiffs as holders of bonds of Everglades Drainage District and the Board of Commissioners of said District.

10. In holding in effect that the Everglades statutes of the years 1931 and of 1937 of the State of Florida, by making bonds and interest coupons instead of cash receivable in redemption of tax sale certificates, did not impair the obligation of the contract between plaintiffs as holders of bonds of Everglades Drainage District and the Board of Commissioners of said District.

11. In holding in effect that the Everglades statute of the years 1931 and of 1937 of the State of Florida by authorizing the Board of Commissioners of Everglades Drainage District to cancel without payment certain acreage tax sale certificates did not impair the obligation of the contract between plaintiffs as holders of bonds of Everglades Drainage District and the Board of Commissioners of said District.

ARGUMENT

I. The decree of the District Court granting the motion of the defendants, appellees, to dismiss the bill of complaint and supplemental bills on the ground as held by the District Court that they do not state a cause of action in equity is erroneous in that the bill of complaint and supplemental bills allege the facts constituting the contract between plaintiffs as bondholders of Everglades Drainage District and the Board of Commissioners of said District, and allege the impairment of the obligation of said contract by statutes of the State of Florida enacted after the said bonds were issued and outstanding and allege the taking of plaintiffs' property without due process of law. The bill of complaint and supplemental bills do allege facts which constitute a cause of action in equity.

.1. The subsequently enacted statutes of 1929, 1931 and 1937 impair the obligation of plaintiffs' contract in that at a time when plaintiffs' bonds and coupons were matured, unpaid and in default, they reduce substantially and below the amount necessary to pay the matured bonds and coupons and bonds and coupons as they would thereafter mature the acreage taxes levied for their payment by the statutes which authorized the issue of the bonds and constitute part of the bond contract.

We here consider only the reduction by the subsequent statutes of the taxes levied for the payment of the bonds.

The motion to dismiss was not properly granted since the bill of complaint and supplemental bills state in this

respect a cause of action in equity. On the motion to dismiss, the truth of the allegations of the bill and supplemental bills is admitted. The determination whether a cause of action is stated is dependent upon the allegations of the bill and supplemental bills and upon the proper interpretation of the statutes involved. *Polk Company v. Glover*, 83 L. Ed. (Advance sheets) 73. On the question whether the obligation of the bond contract was impaired through the reduction by the subsequent statutes of the amount of the acreage taxes levied for payment of the bonds by the statutes which constitute part of the bond contract, it is necessary only to determine whether the levy of such acreage taxes was part of the bond contract and whether the taxes were reduced substantially by subsequent legislation at a time when they were required for the payment of the matured principal and interest of the bonds. The bill and supplemental bills contain allegations both that the acreage taxes levied by particular statutes which authorized the issue of the bonds were part of the bond contract (R. 16-17) and that such acreage taxes were substantially reduced by subsequent statutes (R. 31-33, 58-60, 216-218) (Chapter 13,633, Laws of Florida, 1929, Chapter 14,717, Laws of Florida, 1931, and Chapter 17,902, Laws of Florida, 1937), at a time when payment of principal and interest of bonds was in default, and these allegations are supported by the provisions of the statutes (R. 11-12, 215).

Both the District Court herein in its opinion on the former motion and the Supreme Court of the State of Florida, have decided that the subsequent statutes impair the obligation of the bond contract by reducing the amount of the acreage taxes. The Supreme Court of Florida in a series of opinions filed in the case of *State ex rel. Sherrill*

and *Vann v. Milam, et al.*, 113 Fla. 491, 559, 587, 153 So. 100, 125, 136, has held that the statute of the State of Florida enacted in the year 1925 (Chapter 10,026, Laws of Florida of 1925) levied for payment of the bonds acreage taxes on lands within Everglades Drainage District at rates specified in the statute for the years during which bonds of the District should be outstanding and that such statute and such taxes constituted a part of the contract between the Board of Commissioners of Everglades Drainage District and the holders of the bonds of that District; and that the statute of the State of Florida enacted in the year 1931 (Chapter 14,717, Laws of Florida of 1931) substantially reduced the amount of acreage taxes levied by the statute of 1925 for payment of the bonds and thereby impaired the obligation of the bond contract. The District Court herein had reached the same conclusion supported by an elaborate opinion, *Rorick v. Board of Commissioners*, 57 Fed. 2d 1048, except that the District Court had held that the statute enacted in the year 1923 (Chapter 9119, Laws of Florida of 1923) and not the statute enacted in 1925 was part of the bond contract. The amount of the taxes levied by the statute of 1925 is greater than the amount levied by the statute of 1923, but for the present purpose this is immaterial since the subsequent statutes of 1929, 1931 and 1937 reduced substantially the amount of taxes levied under each of the statutes of 1923 and 1925.

The decisions by the Supreme Court of Florida in *State ex rel. Sherrill and Vann v. Milam, et al.*, 113 Fla. 491, 559, 587, were rendered after the enactment of the 1931 statute and before the passage of the 1937 statute. In the *Sherrill* case bondholder relators sought a peremptory writ of mandamus directing the Board of Commissioners of Ever-

glades Drainage District to prepare a tax list for the year 1932 which would include the tax rates prescribed in the statute constituting part of the bond contract and not the tax rates included in the 1931 statute, and directing the tax assessors to receive such tax lists, to enter such taxes on their tax rolls and to deliver the tax rolls to the tax collectors in order that they might collect the acreage taxes therein prescribed. The first opinion was filed when the court denied a motion of the respondent Board of Commissioners to have the alternative writ of mandamus quashed; the second opinion was filed when the court sustained the relators' demurrer to an answer and return thereafter filed by the respondents; the third opinion was filed when the court granted the motion of the relators to amend the writ of mandamus because through lapse of time there was difficulty in placing the taxes on the tax rolls for the year named in the alternative writ.

In the last opinion filed in *State ex rel. Sherrill and Vann v. Milam, et al.*, 113 Fla. 491, 587, the Florida Supreme Court, after stating (p. 590):

"Inasmuch as all of the questions of law raised in the proceedings by the respective parties have already been determined in favor of the relators",

ordered that a peremptory writ of mandamus issue directed to the members of the Board of Commissioners of Everglades Drainage District commanding them to meet forthwith and to make up the list of lands subject to drainage tax "designating upon such list or lists the amount of taxes assessed against each parcel of land for the year 1932 under the provisions of Chapter 10026, Laws of Florida, 1925." The court further ordered that the writ be directed to the respondent tax assessors commanding

each of them to receive said tax lists and to enter upon his tax roll for the year 1934 "the tax levied and assessed for the year 1932 in the list forwarded him by the Board of Commissioners of Everglades Drainage District under this peremptory writ." The Court further directed the assessors to deliver the tax rolls so prepared to the tax collectors. The court said (p. 589):

"We have already held in the opinion filed herein on April 7, 1933, that the relators timely asserted their legal rights to have the drainage tax for the year 1932, at the rate fixed by chapter 10026, Laws of Florida, 1925, levied, assessed and entered on the tax rolls of the several counties under the provisions of 1167, Revised General Statutes."

In its second opinion in *State of Florida ex rel. Sherrill and Vann v. Milam, et al.*, 113 Fla. 491, 559, the Court stated (p. 560):

"* * * Our holding as to the constitutionality of the statutes and our construction of the statutes in the opinion rendered on the motion to quash the alternative writ of mandamus have therefore become and are the law of the case regarding these matters."

In its first opinion, reported in 113 Fla. 491, the Court said (p. 518):

"Furthermore, the provisions of the several statutes and the amendments thereto regarding the issuance of the Everglades Drainage District bonds, and the levying, assessing and collection of the acreage tax for drainage, and also for the application of the proceeds thereof to the payment of interest and the creation of a sinking fund for the payment of principal when due, in effect at the time of the issuance of the refunding bonds held by relators, became a part of the contract between the Board and such refunding Bondholders."

After stating that the respondents contended that the Act of 1931 provided the tax rate applicable under the relators' contract with the Board of Commissioners, the court in the foregoing opinion said (p. 522):

"We consider this contention untenable, for the following reasons. Chapter 14717 Laws of Florida, Acts of 1931, was enacted long after the issuance and the sale of the bonds held by the relators."

After quoting section 1183 of the Florida Revised Statutes of 1920 (being Sec. 24 of Chapter 6456, Laws of Florida of 1913), which appropriated the proceeds of the drainage taxes for the payment of the bonds, the court in its first opinion in the *Sherrill* case made the following statement (p. 524):

"The above quoted provisions of Section 1183, as also the acreage tax provided for on July 1, 1925, entered into and, under the provisions of Section 1182, Revised General Statutes, became a part of the 'irrepealable contract, between the Board of Commissioners and Everglades Drainage District, with the relators as holders of the refunding bonds and coupons thereof issued by virtue of Chapter 10027, *supra*, on July 1, 1925. * * *

"In our discussion of the provisions of Chapter 14717, Laws of Florida, Acts of 1931, we have already observed that the acreage tax levied under such provisions is less than that fixed in Chapter 10026, Laws of Florida, Acts of 1925, and furthermore that the division and appropriation of such drainage tax, made in Chapter 14717, Laws of Florida, are contrary to the provisions made for the appropriation of such drainage tax money, for the retirement of bonds found in Sections 1165 and 1183, Revised General Statutes of Florida. We also call attention to the fact that the rate of certain of the acreage tax provided for in Chapter 1417,

Acts of 1931, is left to the discretion of the Board of Commissioners." (p. 525)

"The acreage tax authorized and levied under the provisions of Chapter 10026, Laws of Florida, Acts of 1925, and which was in force on July 1, 1925, when the refunding bonds were issued, is the acreage tax which the relators as holders of such refunding bonds are entitled to have assessed and collected, and the necessary portion of the proceeds applied toward the payment of the interest on, and retirement of the principal of such bonds." (p. 541)

The federal district court herein, in its opinion rendered on the former motion for interlocutory injunction, had already reached the conclusion that the reduction of the acreage taxes by the subsequent legislation of 1929 and 1931 impaired the obligation of plaintiffs' bond contract.

In view of these decisions, both by the state court in the Sherrill case and by the federal district court herein on the former motion, it is difficult to understand the basis for the district court's decision dismissing the bill and the supplemental bills on the present motion of defendants (24 Fed. Supp. 458, 459). The district court in its opinion explains the matter as follows:

"From an examination of the cases of *Martin v. Dade Muck Land Company*, 95 Fla. 530, 116 So. 449; *State ex rel. Sherrill v. Milam, et al.*, 113 Fla. 491, 153 So. 100, 125, 136; *State ex rel. Board of Commissioners of Everglades Drainage District v. Sholtz*, 112 Fla. 756, 150 So. 878; *Everglades Drainage District et al. v. Florida Ranch & Dairy Corporation*, 5 Cir., 74 F. 2d, 914, it appears that the Supreme Court of Florida has passed upon the questions presented to this court adverse to plaintiff, and notwithstanding the decision in the Rorick Case, *Rorick v. Board of Com'rs*, 57 F. 2d, 1048, this court is bound by the construction placed

upon these statutes by the highest court of the state
Erie Railroad Company v. Harry J. Tompkins, 58 S
 Ct. 817, 82 L. Ed. ____."

Before showing that the state court cases to which the district court referred do not support its conclusion, we state that the decision of the district court is in substance that taxes levied by a statute for payment of bonds and constituting part of the bond contract may be reduced substantially by subsequent statutes when the bonds are in default and the taxes are necessary for their payment without impairing the obligation of the bond contract. If this were accepted as the law, the impairment clause of the federal Constitution would in effect be eliminated.

The State court did not make such an error. In the foregoing quotation, the district court relies upon *State ex rel. Sherrill and Vann v. Milam, et al., supra*, as authority for its conclusion that the Florida Supreme Court had passed upon the questions presented to the federal district court in this case adversely to plaintiffs. From the examination of the case of *Sherrill and Vann v. Milam, et al., supra*, it is clear that the foregoing statement of the federal district court is erroneous. The court also relies upon two other state court decisions: *Martin v. Dade Muck Land Co.*, 95 Fla. 530, and *State ex rel. Board of Commissioners of Everglades Drainage District v. Sholtz*, 112 Fla. 756. In neither of these cases did the court even consider the question whether a subsequent statute which admittedly reduces substantially taxes levied for the payment of bonds and constituting part of the bond contract, impairs the obligation of the contract. The *Sherrill* case is the most recent of these state court cases cited by the district court and is diametrically opposed to the decision of the district court herein.

The only other case relied upon by the district court herein is *Everglades Drainage District, et al. v. Florida Ranch & Dairy Corporation*, 74 Fed. 2d 914 (C. C. A. 5). In this case, in the year 1934, a suit in equity was brought by an owner of lands in Everglades Drainage District and bonds of the District to enjoin the Board of Commissioners from transmitting to the tax assessors, tax lists for the years 1932, 1933 and 1934 at the rates of taxation prescribed by Chapter 10026, Acts of 1925 on the ground that that statute impaired the obligation of plaintiff's contract because it levied higher taxes upon plaintiff's land than the Act of 1923, and because the taxes levied in the 1925 Act were reduced on certain lands in the district, although the amount of taxes as a whole was increased under the 1925 Act over the amount levied in the 1923 Act. The plaintiff's bonds were issued under the 1923 Act. The bill prayed for an interlocutory injunction as well as a permanent injunction, and both were granted by the district court.

On appeal to the Circuit Court of Appeals, that court held that the plaintiff had an adequate remedy at law, and reversed the decree of the district court. In holding that the plaintiff, as a bondholder, could not complain of the impairment of the obligation of its contract by the enactment of the statute of 1925, the court said (p. 917):

"* * * Nor in our opinion has plaintiff in its capacity of bondholder shown any violation of the contract clause of the Federal Constitution by reason of the fact that the 1925 act increased the taxes on the 2,000,000 acres of land in the Everglades proper, which it appears have and will receive the greatest benefit from the drainage operations. * * *

"But in our opinion plaintiff has the right to show if it can that the reduction of taxes in the largest zone containing 2,000,000 acres, upon which the taxes have

been decreased some \$85,000 per annum by the act of 1925, impairs the obligation of its contract as a bondholder."

The Circuit Court of Appeals in its opinion also stated (p. 917):

"On the merits we are confronted at the outset with the decision of the Supreme Court of Florida in the *Sherrill-Milam* case. The relators in that case were refunding bondholders, but the decision would doubtless have been the same if they had been original bondholders, since only one levy is provided for and it applies to all bondholders alike. The court held that chapter 10026, Acts of 1925, and not chapter 9119, Acts of 1923, was controlling in the fixing of taxes and rates of taxation. It therefore in effect rejected the construction placed on these two statutes by a three-judge court in the case of *Rorick v. Board of Com'rs of Everglades Drainage District* (D. C.) 57 F. (2d) 1048. Notwithstanding the decision in the *Rorick* case, the federal District Court and this court are bound by the construction placed upon these statutes by the highest court of the state."

The court thus stated that it regarded the 1925 statute as part of the bond contract as the state court had done in the *Sherrill* case. On no possible theory, therefore, can the Florida Ranch and Dairy case be regarded as sustaining the doctrine that by a subsequent statute, the taxes levied by the statute which is part of the bond contract may be reduced substantially when they are necessary to pay the bonds which are in default. If the district court herein had regarded the Florida Supreme Court decision in the *Sherrill* case as binding upon it, as the Circuit Court of Appeals in the Florida Ranch and Dairy case stated that it should, it would not have dismissed the bill and suppl-

mental bills, but would have denied the motion of defendants herein to dismiss upon the ground that the state court had already decided that the 1931 statute impaired the obligation of plaintiffs' bond contract. The 1937 statute reduces the total amount of the acreage taxes even below the amount levied in the 1931 statute (R. 216-217). Therefore on the authority of the *Sherrill* case the district court in the present case should have held that the 1937 statute also impaired the obligation of plaintiffs' bond contract.

If the doctrine of *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, referred to in the district court opinion herein, is applicable to the present case which involves a federal question, the effect is to make the decision of the Florida Supreme Court in the case of *Sherrill and Vann v. Milam, et al.*, 113 Fla. 491, binding on the district court herein, and to require the district court to deny the motion of defendants to dismiss the bill and supplemental bills. The same result follows if the doctrine of the *Erie Railroad* case is not applicable, since both the federal district court herein on the former motion and the state court have decided that the statutes of 1931 and 1937 do impair the obligation of the plaintiffs' bond contract by reducing the amount of taxes levied for the payment of the bonds. No question of interpretation of the statutes is involved in the consideration of this question as it is alleged by the plaintiffs' pleadings and admitted by defendants' motions to dismiss both that the statute levying the taxes and the taxes are part of the bond contract and that the subsequent statutes reduce these taxes substantially at a time when the bonds are in default and the taxes are necessary for their payment. The district court herein departed in its present decision from its decision on the former motion solely upon its mistaken statement that its former decision

was in conflict with the decisions of the state court. The Florida Supreme Court has not passed upon the constitutional validity of the 1937 statute (Chapter 17,902, Laws of Florida of 1937), nor interpreted that statute, but since that statute reduces the amount of acreage taxes which are part of plaintiffs' bond contract to a greater extent than the statute of 1931, and as the 1937 statute was enacted by the legislature upon the application of the Board of Commissioners of Everglades Drainage District after the decision of the Florida Supreme Court in *Sherrill and Vann v. Milam, et al.*, 113 Fla. 491, and after the decision of the federal court herein, in *Rorick v. Board of Commissioners*, 57 Fed. 2d 1048, the statute of 1937 is obviously unconstitutional on the ground that it impairs the obligation of plaintiffs' bond contract.

Even without the aid of the foregoing decisions it is clear that the subsequent statutes impair the obligation of the plaintiffs' bond contract by admittedly reducing the amount of acreage taxes constituting part of the bond contract at a time when the bonds are in default and the taxes are necessary for the payment of the bonds:

United States ex rel. Von Hoffman v. City of Quincy, 4 Wall. 535;

Wolff v. New Orleans, 103 U. S. 358;

Mobile v. Watson, 116 U. S. 289;

Louisiana v. New Orleans, 215 U. S. 170;

Nelson v. St. Martin's Parish, 111 U. S. 716;

Galena v. Amy, 5 Wall. 705;

Louisiana v. Pillsbury, 105 U. S. 278;

Board of Liquidation v. McComb, 92 U. S. 531;

Ralls County Court v. United States, 105 U. S. 733;

Columbia County v. King, 13 Fla. 451;

Graham v. Folsom, 200 U. S. 248;

Sherrill and Vann v. Milam, et al., 113 Fla. 491, 153 So. 100;

Boatright v. Jacksonville, 117 Fla. 477, 158 So. 42;

State ex rel. Sovereign Camp v. Boring, 121 Fla. 781, 164 So. 859.

2. The subsequently enacted statutes of 1929, 1931 and 1937 impair the obligation of the plaintiffs' contract by diverting to other purposes without any substitute and without the consent of bondholders a substantial part of the taxes levied for the payment of the bonds and expressly appropriated and set aside for that purpose by the statute which was part of the bond contract, and necessary at the time of such diversion for the payment of the matured bonds and coupons and those maturing thereafter.

We here consider the diversion of the acreage taxes to purposes other than the payment of the bonds. The statutes which authorized the issue of the outstanding bonds of this District levied the acreage taxes for the payment of the bonds (Chapter 6456, Laws of Florida of 1913, Secs. 5, 6 as amended; R. G. S. 1164, 1165 as amended (R. 17)); appropriated and set aside the proceeds of the acreage taxes in the hands of a separate custodian for the payment of the bonds (Chapter 6456, Laws of Florida of 1913, Sec. 24; R. G. S. Sec. 1183 (R. 18)); and contained a condition that after the issue of the bonds first authorized to be issued no additional bonds should be authorized to be issued unless such authority was accompanied by the levy of additional acreage taxes sufficient (R. 16-17) to meet the requirements of the bonds (Chapter 6456, Laws of Florida of 1913, Sec. 19 as amended by Chapter 6957 of 1915 and Chapter 7862 of 1919; R. G. S. Sec. 1178 as amended). The foregoing provisions of the statute are part of the bond contract.

Von Hoffman v. Quincy, 4 Wall. 535; *Board of Liquidation v. McComb*, 92 U. S. 531; *Louisiana v. Pillsbury*, 105 U. S. 278; *Wolff v. New Orleans*, 103 U. S. 358. By these requirements of the statute the taxes themselves and the proceeds thereof are required to be applied exclusively to the payment of the bonds so far as necessary. As additional bonds were authorized by the statute to be issued, additional taxes were levied sufficient to meet the requirements of the bonds (R. 16).

The acreage taxes and their proceeds can be effectively set aside and appropriated exclusively for the payment of the bonds only if the legislature has the power to make such provision in the statute and if in the statute that purpose is effectively expressed by the use of appropriate language. In such a tax district created by the legislature (*Lainhart v. Catts*, 73 Fla. 735) primarily for the purpose of making improvements therein out of the proceeds of bonds of the District authorized by the statute to be issued and sold to the public, the legislature had ample power to levy the acreage taxes and to require that these taxes be applied exclusively to the payment of the bonds. *Von Hoffman v. City of Quincy*, 4 Wall. 535; *Village of Kent v. United States*, 113 Fed. 232 (C. C. A. 6); *Rorick v. Board of Commissioners*, 57 Fed. 1048; *Duval Cattle Co. v. Hemphill*, 41 Fed. 2d 433 (C. C. A. 5); *First State Savings Bank v. Little River Drainage District*, 122 Fla. 304, 165 So. 48; *Keeffe v. Adams*, 106 Fla. 733, 143 So. 644; *Sherrill and Vann v. Milam, et al.*, 113 Fla. 491, 153 So. 100; *Lawler v. Knott*, 129 Fla. 136, 176 So. 113, 130 Fla. 424, 178 So. 420; *Yonge v. Franklin*, 184 So. 237 (Advance Sheets, Fla.); *Martin v. Dad Muck Land Co.*, 95 Fla. 530, 116 So. 449; *State v. Harris*, 119 Fla. 375, 161 So. 374. The state court had on numerous occasions approved the arrange-

ment for the issue of these bonds: *Bannerman v. Catts*, 80 Fla. 170, 85 So. 336; *Lainhart v. Catts*, 73 Fla. 735, 75 So. 47; *Everglades Sugar and Land Co. v. Bryan*, 81 Fla. 75, 87 So. 68; *Berry v. Hardee*, 83 Fla. 531, 91 So. 685; *Richardson v. Hardee*, 85 Fla. 510, 96 So. 290.

The intention of the legislature to apply the acreage taxes exclusively to the payment of the bonds is effectively expressed in the statutes which authorized the issue of the bonds and levied the taxes. The statutory arrangement in respect of the requirement that the acreage taxes be applied to the payment of the bonds is as follows: First, the statute (Chapter 6456, Laws of Florida of 1913 as amended, R. G. S. Secs. 1160-1188) states the purpose of forming the district and describes the lands included therein (Sec. 1; R. G. S. Sec. 1160); secondly, the statute creates the Board of Commissioners of the District and defines its powers (Secs. 2-4; R. G. S. Secs. 1161-3); next the statute levies the annual acreage taxes (Sec. 5; R. G. S. Sec. 1164); following this, the statute states in general the use which may be made of the proceeds of the taxes (Sec. 6; R. G. S. Sec. 1165); there then follow various provisions of the statute in respect of the placing of the acreage taxes on the tax rolls, the collection thereof, the sale of the lands at public auction for failure to pay the taxes, and similar matters (Secs. 7-18; R. G. S. Secs. 1166-1177). The statute then authorizes the issue of bonds of the District (Sec. 19; R. G. S. Sec. 1178). The original 1913 Everglades Statute authorized a limited amount of bonds to be issued, which amount was thereafter increased from time to time by amendments made to the statute (R. 16). The statute (Sec. 19; R. G. S. Sec. 1178) contains a limitation that the authority to issue additional bonds must be accompanied by the levy and imposition of additional

taxes sufficient to meet the payment of the bonds and interest thereon as the same should fall due, such payments to be provided for by a sinking fund, and such additional bonds to constitute an obligation of equal dignity with the bonds theretofore authorized, and equally with the bonds theretofore authorized to be entitled to payment from all drainage taxes then or thereafter imposed upon the lands within said district without preference to any bonds over any other bonds (Chapter 6456, Laws of Florida of 1913, as amended; R. G. S. Sec. 1178). The legislature complied with the foregoing limitation by increasing the amount of taxes levied by each amendment which authorized the issue of additional bonds (R. 16). There is no provision in the statute requiring additional taxes to be levied for the payment of other expenses or indebtedness of the District as a condition to the issue of additional bonds.

Provision is then made in the statute for the execution of the bonds and related matters, including a requirement that the attorney general of the state shall examine the bonds and if as a result of such examination he finds that such bonds are issued in conformity with the constitution and with the statute, and that they are valid obligations of the Board of Commissioners and of the District he shall officially so certify upon the bonds in the form provided in the statute, and the statute directs that the bonds shall pledge the faith and credit of the Board of Commissioners of the District for the prompt payment of the principal and interest thereof (Secs. 20-21, 22; R. G. S. Secs. 1179-1180, 1181). The attorney-general did so certify all outstanding bonds (R. 13), and the bonds recite that the full faith, credit and resources of the Board are pledged for the punctual payment of the principal and interest of the bonds (R. 19, 45, 53). The statute then pro

vides (Sec. 23; R. G. S. Sec. 1182) that the provisions thereof shall constitute an irrevocable contract between the Board of Commissioners and Everglades Drainage District and the holders of the bonds and coupons issued pursuant to the provisions of the statute, and that any holder of any of said bonds or coupons either at law or in equity may enforce performance of the duties required by the statute of any of the officers or persons mentioned in the statute in relation to the said bonds or to the collection, enforcement and application of the taxes for the payment thereof.

There then follows in the statute the provision directly and specifically making the appropriation of the taxes for the payment of the bonds. The statute provides (Sec. 24; R. G. S. Sec. 1183) that it shall be the duty of the state treasurer as custodian of the funds belonging to the Board of Commissioners and to Everglades Drainage District, out of the proceeds of the taxes levied by the statute and out of any other money in his possession belonging to the Board of Commissioners or to Everglades Drainage District, "which moneys so far as necessary are hereby set apart and appropriated for the purpose" to apply said moneys and to pay the interest upon said bonds as the same shall fall due and at the maturity of said bonds out of the said moneys to pay the principal thereof, and there is created a sinking fund for the payment of the principal of the bonds, "and the said board shall set apart and pay into such sinking fund annually out of the taxes levied and imposed by this article, and the other revenue and funds of said District at least two per cent of the amount of bonds outstanding. The said sinking fund for the payment of said bonds shall not be appropriated to any other purpose than herein specified." The statute then pro-

vides (Sec. 25; R. G. S. Sec. 1184) that the state treasurer shall be custodian of all funds belonging to said district, and such funds shall be disbursed only in the manner therein designated. In the section of the statute appropriating the proceeds of the taxes for the payment of the bonds, there is no provision made that such proceeds may be applied to any other purpose whatever, and in no other part of the statute is there any specific appropriation of the proceeds of the taxes for any purpose other than the payment of the bonds.

Not only do the Everglades statutes contain an express appropriation and setting aside of the acreage taxes in the hands of a separate custodian for the payment of the bonds, which is in itself an effective and mandatory provision for the application of such taxes exclusively to the payment of the bonds, but the taxes are levied by the statute for the specific purpose of paying the bonds, and there is contained in the statute the requirement that when additional bonds are authorized, additional acreage taxes shall be levied sufficient to meet their payment. The purpose of levying the acreage taxes for the payment of the bonds, of appropriating them for that purpose, and of requiring the levy of additional taxes sufficient to meet the payment of additional bonds authorized to be issued, is to insure as far as possible the payment of the bonds, first by levying the necessary amount of taxes and secondly by requiring the taxes and their proceeds to be applied exclusively, so far as necessary, to the payment of the bonds.

On the former motion the district court herein held. (*Rorick v. Board of Commissioners*, 57 Fed. 2d 1048) that the acreage taxes could not be diverted by the 1931 statute

to purposes other than payment of the bonds when the taxes were necessary for that purpose, and said (p. 1056):


"We hold, therefore, that the provisions of chapter 6456, Acts 1913, and its several amendments pursuant to which plaintiffs' bonds were issued and acreage taxes to pay the same were levied, constitute a contract between plaintiffs and the district; that the legislation imposing acreage taxes to pay those bonds and interest, which was in effect when the bonds were issued, cannot be withdrawn, nor can the proceeds of such taxes be diverted to other purposes, so long as such proceeds are necessary to pay interest and create a sinking fund as prescribed by section 24 of chapter 6456, now section 1560, Comp. Gen. Laws 1927, and the several resolutions of the board, all of which are parts of the bond contract. We further hold that the proceeds of the acreage taxes and other funds of the district (except the ad valorem tax under the act of 1921) are specifically appropriated (*Lainhart v. Catts*, 73 Fla. 735, 75 So. 47, text 54; *Bannerman v. Catts*, 80 Fla. 170, 85 So. 336; *State v. Allen*, 83 Fla. 214, 91 So. 104, text 105, 26 A. L. R. 735), and pledged to the extent and for the purposes just mentioned; the appropriation and pledge continuing so long as these funds are necessary to meet the requirements of the bonds issued pursuant thereto. It is the duty of the state treasurer and of the board of commissioners to devote said funds to the purposes named, as far as may be necessary, before using any part thereof for any other purpose.

"If, as urged by the board, it would by this holding be left without adequate operating or maintenance revenue, the situation may be met by further exertion of the taxing power to provide the same." (R. 96)

In this holding, there was no dissent.

On the present motion the district court departed from its former decision only, as we understand, because they

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

440

38-69



erroneously concluded that the Supreme Court of Florida had since the district court's former determination decided this question adversely to the bondholders.

District Judge CLAYTON in considering this question in *Rorick v. Board of Commissioners*, 27 Fed. 2d 377, had said that the Everglades statutes "by various carefully worded provisions trying to protect the payment of the bonds issued thereunder, clearly and even *ex industria* pledged all tax funds" for the payment of the bonds and the interest thereon.

In numerous cases it has been held that taxes may be effectively appropriated and set aside exclusively for the payment of bonds.

New Orleans v. Fisher, 180 U. S. 185;

Seibert v. Lewis, 122 U. S. 284;

Mobile v. Watson, 116 U. S. 289;

Louisiana v. Pillsbury, 105 U. S. 278;

Louisiana v. Jumel, 107 U. S. 711;

Jewell v. City of Superior, 135 Fed. 19 (C. C. A. 7);

Hayden v. Douglass County, 170 Fed. 24 (C. C. A. 7);

Smith v. Boise, 18 Fed. Sup. 385;

Hubbell v. Leonard, 6 Fed. Sup. 145;

City of Jacksonville v. Bankers Life Co., 90 Fed. 2d 141 (C. C. A. 7);

Miller v. Hamilton, 233 Fed. 402 (C. C. A. 8);

Moore v. Otis, 275 Fed. 747 (C. C. A. 8);

Keefe v. Adams, 106 Fla. 733, 143 So. 644.

In view of the fact that the District Court herein has in effect by its decision on the present motion destroyed its decision on the prior motion on the ground as stated by it that it was in this respect purporting to follow decisions of the Supreme Court of Florida, it is necessary to examine the

decisions of that court, but before doing so, we call attention to the only contention which has been made by the defendants in respect of the appropriation of the taxes made by the Everglades statute, namely, that the appropriation does not prevent the use of the acreage taxes for the purpose of paying the expenses of operating the District. This contention is based on alleged necessity and on the provision contained in Section 6 of the statute which provides for the use generally of the proceeds of the acreage taxes (R. G. S. Sec. 1165).

The necessity of funds for operating expenses in this District is met by provision which the legislature made in 1921 (Chapter 8412, Laws of Florida of 1921) by levying ad valorem taxes for such purpose (R. 35). In this tax district it is obviously for the legislature, not for the Board of Commissioners, to determine the amount of operating expenses and the sources from which they will be paid. The legislature has ample power to levy, when necessary, additional taxes for payment of operating expenses. Even if all of the acreage taxes are required to pay the bonds and coupons, and no part thereof is available for payment of operating expenses, this is not a practical difficulty which would control the construction of the statute. The legislature necessarily contemplated such a possibility when it appropriated the proceeds of the taxes for the payment of the bonds. The legislature increased the expenses of operating the District by statutes enacted subsequently to the issue of the bonds, which substituted for the state officials as members of the Board of Commissioners, who acted *ex officio* and without salaries, private individuals with salaries (R. 58, 214). Under such changed conditions, if the funds available for payment of operating expenses were not sufficient, it was the duty of the Board of Commissioners

who presented and recommended the enactment of the statute increasing the expenses to request the legislature to make provision therefor, and of the legislature to take this matter under consideration in increasing the expenses of the District. If the Board of Commissioners may use such part of the acreage taxes as they see fit for operating expenses, there would in substance be no appropriation of the acreage taxes for the bonds. It has been held that such necessity as is urged here is no basis on which to divert taxes appropriated for given purposes.

Galena v. Amy, 5 Wall. 705;

Village of Kent v. United States, 113 Fed. 232 (C. C. A. 6);

State ex rel. Keefe v. Cotton, 106 Fla. 733, 143 So. 644;

Bates v. Porter, 74 Cal. 224.

In *Lainhart v. Catts*, 73 Fla. 735, at 748, 75 So. 47, the court, after referring to the fact that the taxes upon the lands are fixed, determined and imposed directly by the legislature and are not referred to the judgment of any Board or body to be ascertained and determined, said in respect of the nature of these taxes:

"Such assessment or charges are, as stated in the Acts, to provide means to accomplish the purposes set out in these Acts and is a peculiar species of taxation distinct from the general burden imposed for State, county and municipal purposes, in that it is a special charge placed upon the land, situated in the Drainage District to pay for public improvements proposed to be made therein, on the theory that such property thereby derives a special benefit, and therefore such charges constitute a special assessment.

* * *

In the Everglades statute provision is made (sec. 6, R. G. S. Sec. 1165) for the application of the proceeds of the acreage taxes to the general purposes provided in that section, including the payment of bonds. The contention has been made by the Board of Commissioners that this section of the statute determines ultimately and finally the only purposes to which the taxes may be applied, and that the subsequent provisions of the statute authorizing the issue of bonds and providing that in the event bonds are issued, the acreage taxes shall be appropriated and set aside exclusively for the payment of bonds, are not effective because they are in conflict with section 6 in the earlier part of the statute which provides the general purposes for which the taxes may be used. This contention is in effect that with the provisions of section 6 in the statute, no effective authority could be given in the subsequent part of the statute for the issue of bonds by the appropriation of the taxes exclusively for their payment, and that section 6 makes it imperative that bonds could be authorized to be issued under the statute to be paid out of acreage taxes only in the manner provided in section 6, that is, after the payment of operating and various other expenses of the District.

Section 6 merely provides the power which the Board of Commissioners have to disburse the proceeds of the acreage taxes in the absence of any more specific and definite provision in the statute. The legislature, after inserting section 6 in the statute, then made provision for the issue of bonds and for securing the payment thereof, by authorizing the issue of bonds and by providing further, in the event bonds are issued, that the acreage taxes are appropriated and set aside exclusively for their payment so far as necessary. If no bonds are issued, section 6 provides the authority for the disbursement of the acreage

taxes, but upon the issue of bonds the acreage taxes are appropriated exclusively for their payment so far as necessary, and section 6 of the statute would then apply solely to any excess taxes not required for payment of the bonds. The principle of law is that in the construction of a statute the particular provision controls the general, *D. Ginsburg & Son v. Popkin*, 285 U. S. 204; *United States v. Chase*, 135 U. S. 255, but it is not necessary to rely upon such a principle of construction in the present case because the statute clearly defines the conditions under which bonds of the district may be issued, one of which is that the acreage taxes shall be appropriated exclusively, so far as necessary, for the payment of the bonds, and nothing contained in section 6 is in conflict with this provision.

There are no decisions of the Supreme Court of Florida either in respect of Everglades Drainage District or in other matters which, if followed by the district court herein, would require it in deciding the present motion to reach a conclusion in opposition to its decision on the former motion herein. In *Boatright v. City of Jacksonville*, 117 Fla. 477, 158 So. 42, 46, the court said in another matter:

"In the case of *City of Clearwater v. State, ex rel. United Mutual Life Ins. Co.*, 108 Fla. 623, 147 So. 459, 460, this court said:

"Where bonds have been issued by a municipality, with a provision for the levy of stipulated taxes to provide for their payment, the fund contracted to be raised by the agreed taxes is the foundation upon which the bonds themselves rest. The annual tax is the security offered to the creditors who take bonds under laws which constitute a special agreement on the part of the public corporation debtor to provide for their payment according to terms. And as the Supreme Court of the United States has said in the

case of *Louisiana v. Pillsbury*, 105 U. S. 278, 288, 26 L. Ed. 1090; "The annual tax * * * could not be afterwards severed from the contract without violating its stipulations, any more than a mortgage executed as security for a note given for a loan could be subsequently repudiated as forming no part of the transaction.' "

In *First State Bank v. Little River Drainage District*, 122 Fla. 304, 165 So. 48, the court said (p. 306):

"Therefore all funds on hand (the term 'funds' here used being employed in the sense of tax liens capable of being realized upon and converted into cash as well as cash itself after realization) are equitable assets of the drainage district held by the Supervisors thereof under a special statutory trust created for the particular security and benefit of the district's creditors. Accordingly the district supervisors, as statutory trustees, are without authority to discharge, satisfy, liquidate or release any of the equitable assets held by them as security for the payment of the district's bonds, except in accordance with the terms of law under which such assets were originally provided to be collected and held, any subsequently passed statutes providing to the contrary being incapable of being given judicial effect for that purpose as against a complaint in equity duly asserted against the same by one alleging himself to be a creditor of the district and prejudiced thereby. See: *Duval County v. Jennings*, 121 Fla. 584, 164 Sou. Rep. 356."

In *Keefe v. Adams and State, ex rel., Keefe v. Cotton*, 106 Fla. 733, 143 So. 644, the court said (p. 740):

"But it is contended by appellees that the transfer of the funds from 'interest on bonds' to general operating expenses was essential in order to enable them to carry on the normal governmental functions of the city

and that to invalidate such transfer would deprive the city of its means to protect property, maintain order, ward off disease, and perform other duties devolving on it.

"This contention was answered fully in *Chamberlain vs. City of Tampa, supra*, where the Court held that while such critical periods will often occur in corporate as well as individual affairs whenever necessary expenditures exceed possible incomes, but they can furnish no excuse for a municipal corporation to divert its revenues from their legitimate purpose to another not authorized by law, however beneficial or meritorious. *Harrell vs. Woodberry* and *Hyde vs. Melson, supra*; *County Commissioners of Columbia Co. vs. King*, 13 Fla. 451; *Klemm vs. Davenport*, 100 Fla. 627, 129 So. 904; *State ex rel. Dos Amigos, Inc. vs. Lehman*, 100 Fla. 1313."

The Supreme Court of Florida has determined that the proceeds of the acreage taxes appropriated by the Everglades statutes for the payment of the bonds constitute trust funds for the payment of all the bonds of the District. In *State ex rel. Lawler v. Knott*, 129 Fla. 136, 176 So. 113, 130 Fla. 424, 178 So. 420, a holder of overdue bonds of Everglades Drainage District sought through a mandamus proceeding to have his bonds paid in full out of the proceeds of the acreage taxes which were then in the hands of the State Treasurer as custodian of the funds of the District; the court denied him relief on the ground that bonds of the District, other than the bonds of the relator, in large amounts were due and unpaid and the proceeds of the acreage taxes in the hands of the custodian were not sufficient to pay all matured bonds in full.

After the court in the *Lawler* case had granted a motion to quash the alternative writ, had denied a motion

for peremptory writ notwithstanding the return, and had denied petition of relators for rehearing, the parties in that case entered into a stipulation (130 Fla. 424, 427) in which they asked the court to issue the peremptory writ of mandamus which it had theretofore refused to issue; and the court "inadvertently" (130 Fla. 424, 433) complied with that request. No bondholder was a party to that mandamus proceeding except the relator whose bonds the peremptory writ, granted pursuant to such stipulation, directed to be paid in full out of the funds in the hands of the custodian which were not sufficient to pay all matured bonds. After the issuance of the peremptory writ, the attorney for plaintiffs in the present action filed a petition in the *Lawler* case in the Florida Supreme Court asking leave to intervene and that the court recall its peremptory writ or stay the execution thereof and for further relief. On this petition the court did not grant to petitioners a right to intervene since, under the state law, there is no right to intervene in a mandamus proceeding, but ordered that further execution of the peremptory writ be stayed until a hearing of the objections of the petitioners to the issue of the peremptory writ be had. Upon such hearing the court decided that although the judgment for peremptory writ was improvidently entered on the stipulation, it should stand because the status of the parties to the cause and other litigants had been changed by relying upon the order of the court (130 Fla. 424, 425, 435). In its opinion rendered in denying the petition of relator Lawler for rehearing of its order denying him a peremptory writ notwithstanding the return, the same court said:

"The Constitution and statutes in force at the time of the issuance of the bonds in question enter into and are integral parts of the contract with the bondholders * * *." (129 Fla. 136, 144.)

"And the provisions of such contract for the benefit of the bondholders cannot be impaired nor withdrawn so long as their bonds are unpaid. * * * also, the State Treasurer, as custodian of said fund, was charged with the duty of applying the proceeds of said taxes and any other moneys belonging to said Board or District, which moneys are appropriated for the purpose, to pay interest on said bonds * * * and the Board was required to set apart and to pay into said sinking fund annually out of the taxes levied and other revenue, at least two per cent of the amount of bonds outstanding, and it was provided that said sinking fund should not be appropriated to any other purpose." (129 Fla. 136, 146.)

In *State ex rel. Yonge v. Franklin*, 184 So. 237 (Advance sheets, Florida, 1938), an attorney who had rendered services for Everglades Drainage District, for which he had recovered a judgment, sought by mandamus to secure payment of his judgment out of the proceeds of acreage taxes appropriated in the hands of the custodian for the payment of the bonds, and his application was denied. In granting respondent's motion to quash the alternative writ, the Florida Supreme Court said:

"The relator's allegations and the statutes referred to therein and the insolvent condition of the fund, clearly show that the proceeds of tax collections from which the payments are commanded to be made are statutory funds which are expressly appropriated to the payment of the bonds issued and other authorized expenses incurred by the district; and while the statute contemplates the payment of all proper expenses in executing the purposes of the trust, yet there is no express appropriation to pay any class of such expenses; and being trust funds, payments therefrom not covered by commands of the statute are to be enforced by courts of equity and not by mandamus unless so provided by a valid statute."

In the foregoing statement the court referred both to the allegations of relator and to the provisions of the statutes. The court in any event states that the taxes are expressly appropriated for the payment of the bonds and constitute trust funds for that purpose and that no appropriation is made to pay any class of expenses.

The Florida Supreme Court, therefore, in the *Lawler* case, has held that a bondholder cannot secure payment of his bonds in full out of the proceeds of the acreage taxes when other bonds are in default and there are not sufficient proceeds of acreage taxes in the hands of the custodian to pay all bonds in full; it has held in the *Yonge* case that a creditor of the District, not a bondholder, cannot by mandamus secure payment of his claim out of the proceeds of the acreage taxes when the bonds are in default. There is no state court decision to the effect that a subsequent statute which diverts the proceeds of the acreage taxes from the payment of the bonds to the payment of expenses of the District is valid. The state court has held that the acreage taxes are appropriated for payment of bonds and constitute trust funds for that purpose. The state court has left to an equity court the determination on a proper application, of what, if any, payments may be made for other purposes out of the proceeds of the acreage taxes. Since the legislature had the power to appropriate the taxes for the payment of the bonds and had appropriated them for that purpose, an equity court would recognize and protect such appropriation. The equity court could not both recognize and protect the appropriation and at the same time permit the payment out of the appropriated taxes of other claims in priority to the payment of the bonds for to do so would be to give such other claims a prior right to payment out of the taxes notwithstanding the appropriation for the payment of the bonds, and would in ef-

fect be a holding that the appropriation was not valid. The subsequent statutes have arbitrarily and substantially reduced the taxes levied for the payment of the bonds, and have arbitrarily and substantially diverted the reduced taxes to purposes other than payment of the bonds, at a time when the bonds were due and unpaid and when the whole amount of the taxes constituting part of the bond contract and their proceeds were necessary for the payment of the bonds. These subsequent statutes did not purport to treat the taxes as trust funds for payment of the bonds, but as property in which the bondholders had no right and which could be arbitrarily diverted by the legislature to purposes other than the payment of the bonds.

The cases are to be distinguished where the appropriation is made not by the legislature but by an agent of the state such as a municipality under limited authority given by the legislature to levy taxes in limited amounts for all purposes. In *City of East St. Louis v. Zebley*, 110 U. S. 321 and in *Clay Co. v. United States*, 115 U. S. 616, the legislature had authorized its agent, the municipality or county to levy a limited tax for the payment of operating expenses and for all other purposes; it was held that a creditor could not compel the application of the proceeds of the taxes to the payment of his claims when such proceeds were necessary to pay current administration expenses. The cases hold that under such limited authority to levy taxes for all purposes the current administration expenses are the first claim against the taxes since the authority to levy limited taxes for all purposes necessarily involved the use of such taxes so far as necessary for the payment of the current administration expenses. The mandate of the legislature to the municipality is in substance that it shall live within its limited income and there is no basis for the implication that the legislature will enlarge the authority to

levy taxes in order to provide funds for the payment of current administration expenses. The present case is distinguishable from such cases in that the appropriation was made in our case, not by a municipality under limited authority to levy taxes for all purposes as in the *Zebbley* case and the *Clay* case; the appropriation here is made by the legislature directly in the statute which authorizes the issue of the bonds, the levy of the taxes, and the appropriation of the taxes for the purpose of paying the bonds, so far as they are necessary for that purpose. These provisions were made by the legislature as an inducement to the purchase of the bonds of the District. Under such statutory authority if the appropriated taxes are wholly required for the payment of the bonds so that no portion thereof is available for payment of administration expenses, it is the manifest duty of the legislature which made the exclusive appropriation of the taxes for the payment of the bonds to make other provision for the payment of current administration expenses, which the legislature, in the present case, has done.

In the present case, there is also involved the question whether the legislature by appropriate words effectively exercised its power and actually appropriated the proceeds of the acreage taxes to the extent necessary for the payment of the bonds so as to preclude their use for other purposes at a time when they were necessary for payment of the bonds. The words used in the statute (Chapter 6456, Laws of Florida of 1913, Secs. 25, 24, 19, as amended; R. G. S. secs. 1184, 1183, 1178) are (a) that the taxes are levied for the payment of the bonds and that the state treasurer is the custodian, and it shall be his duty out of the proceeds of the taxes to pay the principal and interest of the bonds; (b) that such proceeds "so far as necessary are hereby set

apart and appropriated for the purpose"; (c) that a sinking fund is created for the payment of the principal of the bonds and that at least two per cent of the amount of the bonds outstanding shall be set apart and paid into such sinking fund annually out of the proceeds of such taxes; (d) the sinking fund shall not be appropriated to any other purpose than the payment of the bonds; (e) the state treasurer shall be the custodian of the proceeds of the taxes; (f) the acreage taxes are levied for the payment of the bonds and additional bonds could not be issued unless acreage taxes were levied sufficient to meet the requirements of the bonds. Not only is the language employed in the statute most clearly designed to appropriate the taxes exclusively to the payment of the bonds, but it is difficult to conceive of words which would more clearly and effectively make such an appropriation. When an effective and exclusive appropriation is made by the legislature itself, the taxes may not be used for any other purpose. The legislature not only used appropriate words of appropriation, but it took the precaution of setting the proceeds of the taxes aside in the possession of the state treasurer as a separate custodian.

The resolutions of the Board of Commissioners which authorized the respective issues of bonds, also provided that the acreage taxes be set aside and appropriated for their payment (R. 18-19).

The conduct of these state officials as commissioners of the District in recommending to the legislature the enactment of the subsequent statutes is similar to the conduct of state officials of the State of Florida as Trustees of the Internal Improvement Fund as referred to in *Trustees of Internal Improvement Fund v. Bailey*, 10 Fla. 112, where the court said:

"Nor can we persuade ourselves that the General Assembly of 1861 had the power to interfere in the slightest degree with any rights which have become vested under the Act of 1855. By that Act, all the Internal Improvement Fund is conveyed to trustees for certain purposes therein named, among which is the payment of the interest on certain bonds, such as those now held by appellee. And now that said bonds have been issued and have passed for a valuable consideration into the hands of *bona fide* holders who have taken them from motives of patriotism and upon the faith both of constitutional provisions and Legislative enactments; now that our roads have been in a great measure built with the very money furnished by the holders of these bonds, and the whole state is rejoicing in the use of them, surely it would be in the last degree wrong for a subsequent Legislature to say in effect by their acts, to the bondholders, 'We have gotten out of you all we wanted, we have gotten your money and built our roads with it, and now we will take the fund which we solemnly and irrevocably pledged to the payment of your interest and appropriate it to the making of other improvements.' But such is not the law. The state is as capable of making a contract as an individual is, and when made is as much bound by it."

Although a sinking fund was required to be set apart, and maintained for the payment of the bonds of the District as they should mature out of the appropriated taxes, by the statutes of the State of Florida and the resolutions of the Board of Commissioners of Everglades Drainage District which accompanied each issue of bonds (R. 18), all of which were part of the bond contract, it is alleged in the bill of complaint that such sinking fund has not been maintained and there are at present no funds in said sinking fund (R. 35) and these allegations are admitted by the

motions of defendants to dismiss the bill and supplement bills.

The law is well established that when taxes are specially levied and expressly appropriated for the payment of bonds by the provisions of the statutes under which bonds are issued, the proceeds of such taxes are trust funds for the payment of the bonds, and cannot be diverted to any other purpose.

- Von Hoffman v. Quincy*, 4 Wall. 535;
Village of Kent v. U. S., 113 Fed. 232 (C. C. A. 8);
City of New Orleans v. Fisher, 91 Fed. 574, 104 U. S. 185;
Vickrey v. Sioux City, 104 Fed. 164;
Moore v. Otis, 275 Fed. 747 (C. C. A. 8);
Maenhaut v. New Orleans, 3 Woods 1, Fed. C. 8940;
Gray v. City of Santa Fe, 89 Fed. (2d) 406 (C. C. A. 10);
Olmsted v. Superior, 155 Fed. 172;
Thompson v. Emmett Irrig. Dist., 227 Fed. (C. C. A. 9);
Keefe v. Adams, 106 Fla. 733, 143 So. 644;
State v. Harris, 119 Fla. 375, 161 So. 374;
Clearwater v. State, 108 Fla. 623, 147 So. 459;
City of Winterhaven v. Sumerlin, 114 Fla. 154 So. 863;
Hubbell v. Leonard, 6 Fed. Sup. 145;
Miller v. Hamilton, 233 Fed. 402;
Fazende v. City of Houston, 34 Fed. 95;
Hidalgo County Road Dist. v. Morey, 74 Fed. 101 (C. C. A. 5);
Jewell v. City of Superior, 135 Fed. 19 (C. C. A. 7); cert. den. 198 U. S. 583;
Hayden v. Douglass County, 170 Fed. 24 (C. C. A. 7);

Smith v. Boise, 18 Fed. Sup. 385;

City of Jacksonville v. Bankers Life Co., 90 Fed. (2d) 141 (C. C. A. 7);

George v. City of Asheville, 80 Fed. (2d) 50 (C. C. A. 4);

Ecker v. Storm Sewer Drainage Dist., 75 Fed. (2d) 870 (C. C. A. 5).

The decision of the district court herein, from which the appeal is taken, is erroneous in dismissing the original and supplemental bills of complaint since, as alleged in the bill and supplemental bills, the subsequently enacted statutes of 1929, 1931 and 1937 are invalid in authorizing the diversion of the proceeds of the acreage taxes to purposes other than the payment of the bonds for which they had been specifically set apart and appropriated by the legislature itself in the statutes which are part of the bond contract, and since such subsequent statutes, in this respect also, clearly impair the obligation of the plaintiff bondholders' contract. By the allegation in respect of the diversion of the acreage taxes by the subsequently enacted statutes, a cause of action is stated by plaintiffs. In dismissing the bill and supplemental bills the district court has committed error in view not only of its own prior determination in this case, and under the decisions on this point by federal and state courts generally, but also its decision is in conflict with the decisions of the Supreme Court of Florida.

3. The subsequently enacted statutes of 1931 and 1937 impair the obligation of the plaintiffs' bond contract in that they substitute for the payment of all acreage taxes in money the payment or redemption of tax sale certificates or tax liens representing delinquent and unpaid acreage taxes in bonds and coupons, and thereby preclude the payment of the principal and interest of the bonds in money.

as provided by the bonds and coupons and by the statutes forming part of the bond contract.

The statutes under which the bonds were authorized to be issued and were issued (Chapter 6456, Laws of Florida of 1913, as amended; R. G. S. secs. 1160-1188) provide that the principal and interest of the bonds are payable in gold coin or its equivalent in lawful money of the United States (Chapter 6456, sec. 20, as amended; R. G. S. sec. 1179), that the proceeds of the taxes shall be applied to the payment of the principal and interest of the bonds (Chapter 6456, sec. 19, as amended; R. G. S. sec. 1178), that such proceeds shall be set aside and appropriated for that purpose (Chapter 6456, sec. 24; R. G. S. sec. 1183), and that the provisions of the statute shall constitute an irrepealable contract between the Board of Commissioners and the bondholders (Chapter 6456, sec. 23; R. G. S. sec. 1182).

The 1931 and 1937 Everglades statutes provide for the payment or redemption of acreage tax sale certificates and tax liens representing unpaid acreage taxes in bonds and coupons of the District. If the redemption of tax sale certificates and tax liens representing past due taxes are paid in bonds and coupons, instead of in money, as provided in the subsequent statutes (Chapter 14717, Laws of Florida of 1931, sec. 71; Chapter 17902, Laws of Florida of 1937, sec. 12), the obligation to pay the principal and interest of the bonds as they mature in money, cannot be performed, because the new arrangement is one for satisfaction of taxes through cancellation of bonds and coupons. Furthermore a statute authorizing the use of bonds and coupons for the purpose of redeeming tax sale certificates and tax liens on tax delinquent lands, at a time when the taxes collected are insufficient to pay matured bonds and coupons in full, would be unconstitutional in that such statute would in effect permit certain bondholders to receive payment of

their bonds and coupons in full, while others not owning bonds and so not in a position to pay taxes thereon, would receive only their proportionate share of the reduced amount of taxes collected in money.

In *First State Savings Bank v. Little River Drainage Dist.*, 122 Fla. 304, 165 So. 48, the Court said:

"The decree in this case refusing to award an injunction to complainant below to restrain the Supervisors of Little River Valley Drainage District . . . from accepting bonds or interest coupons in lieu of money in payment of taxes due the District with which to provide for the payment of, and to retire, appellants' bonds, should be and the same is hereby reversed on the authority of the following cases: *Frier v. State*, 11 Fla. 300.; *Crummer v. City of Fort Pierce*, 2 Fed. Suppl. 737; *McNee v. Wall*, 4 Fed. Suppl. 496 (reversed by U. S. Supreme Court on other grounds); *Keefe v. City of St. Petersburg*, 5 Fed. Suppl. 132; *Moore v. Branch*, 5 Fed. Suppl. 101; *Harris v. City of Miami*, 6 Fed. 305; *Humphreys v. State, ex rel. Palm Beach Co.*, 108 Fla. 92, 145 Sou. Rep. 858."

McNee v. Wall, 13 Fed. Supp. 326, affirmed 87 Fed. 2d 768 (C. C. A. 5);

Howard v. State ex rel. McGarry, 226 Ala. 215, 146 So. 414.

In a number of cases in the United States Supreme Court, sometimes referred to as the "Virginia Coupon Cases", it was decided that where a statute which was part of the bond contract authorized bondholders to pay taxes with the coupons from their bonds, subsequent statutes purporting to take away or to limit such right of the bondholders were unconstitutional as an impairment of the obligation of the bondholders' contract, and also that the existence of such contract as well as the validity of the subsequent legislation alleged to impair the obligation

of such contract were matters upon which the United States Supreme Court would not be bound by the decision of a state court.

McCullough v. Virginia, 172 U. S. 102;

Antoni v. Greenhow, 107 U. S. 769;

Royall v. Virginia, 116 U. S. 572;

Hunt v. State ex rel. Citrus Growers' Assn., 13 Fla. 753, 163 So. 83.

The foregoing cases establish the converse of the point we here make; in principle, they are authorities in support of the proposition that where certain taxes are levied on pay bonds and coupons and are specially set aside and appropriated for that purpose, subsequent statutes cannot be enacted authorizing the payment of such taxes on bonds and coupons.

4. The subsequently enacted statutes of 1931 and 1932 impair the obligation of the plaintiffs' bond contract in that they provide that the lands offered for sale by the tax collectors at public auction for satisfaction of unpaid acreage taxes and not purchased by other bidders at the sale for the amount of the defaulted taxes shall be bid off for the Board of Commissioners of the District, instead of for the Trustees of the Internal Improvement Fund of the State of Florida as provided in the statutes which are part of the bond contract, since by such change through the subsequent statutes, the bid off lands are in substance exempted from the payment of acreage taxes while held by the Board of Commissioners and would not be so exempted while held by the Trustees of the Internal Improvement Fund and the Trustees are thereby relieved from the payment of taxes on the bid off lands.

The statutes which are part of the bond contract (Chapter 6456, Laws of Florida of 1913, as amended by Chap

1906, Laws of Florida of 1917, Revised General Statutes of Florida, 1920, Secs. 1160-1188) provide that when the tax collector shall offer for sale lands on which acreage taxes have not been paid, in case there are no bidders at such sale who bid for the offered lands the amount of the defaulted acreage taxes, the whole tract on which the unpaid taxes are levied shall be bid off by the tax collector for

"* * * the Trustees of the Internal Improvement Fund, and shall be held by said Trustees during the period herein allowed for the redemption of said lands in like manner and with like effect as lands sold to the State for non-payment of State and county taxes are held by the State as now provided by law; * * * The land shall be struck off to the person who will pay tax, costs and charges for the least portion of the land, * * *"
(Chapter 6456, Sec. 12 as amended by Chapter 7305, Laws of Florida of 1917, Sec. 3; R. G. S. Sec. 1171).

The section of the statute (Chapter 6456, Sec. 5 as amended; R. G. S. Sec. 1164) which levies the acreage taxes provides that "annual assessments of taxes shall be and are hereby levied and imposed upon all the lands within said District." The lands within the District are divided into zones, and the acreage taxes are levied at the specified rates upon the lands described by township, range and section. At the conclusion of the section of the statute which levied the taxes upon all of the lands within the District, there is the following provision in respect of lands held by the Trustees of the Internal Improvement Fund (Chapter 6456, Sec. 5 as amended; R. G. S. Sec. 1164):

"The lands within said district held by the trustees of the internal improvement fund shall be subject to the taxes hereby imposed, and the said trustees, in furtherance of the trusts upon which the said lands are held are hereby authorized and empowered to pay

60

the same out of any funds in their possession derived from the sale of lands or otherwise."

Under the foregoing provisions of the section of the statute levying the annual acreage taxes upon all the lands within the District, which were in effect during all the time bonds were being issued, no distinction is made between lands held by individuals other than the Trustees of the Internal Improvement Fund, lands held by the Trustees at the time the District was formed, lands acquired by the Trustees after the formation of the District whether the lands were bid off for the Trustees or acquired otherwise; in fact the lands are described in the section of the statute without any reference whatever to the owners of the lands. If lands bid off for the Trustees should not be subject to the annual payment of acreage taxes, then, contrary to the provision of the taxing section of the statute, less than all of the lands of the District are subject to the annual payment of acreage taxes, and lands specifically described in the taxing section by township, range and section for the sole purpose of making such lands subject to the annual payment of acreage taxes are not in fact subject to such payment. The usual way to make lands subject to annual payment of acreage taxes is to state that they are so subject, and to describe the lands so subject with sufficient definiteness to identify them. This has been done in the present statute.

If certain lands in zone 1 subject to acreage taxes at \$1.00 per acre are bid off for the Trustees, the lands so bid off still retain their place in zone 1 and are still subject to the annual acreage taxes levied upon them. In the absence of a provision of the statute expressly excepting bid off lands from acreage taxes, the lands so bid off for the Trustees are subject to the annual payment of acreage taxes by virtue of the provisions of the taxing section and the loca-

tion of the lands within the zone of the District which subjects the lands to taxes at the rate specified in the statute regardless of who the owner is or of how he acquired the title. If it is asserted that the lands bid off become exempt from the taxes notwithstanding the provisions of the taxing section subjecting them to taxes, the burden is on the person who so asserts to establish the manner in which such bidding off exempts the lands from taxes in the absence of an express provision to that effect:

The provisions in the 1931 statute (Chapter 14717, Laws of Florida of 1931, sec. 56 (c)) which impair the obligation of the bond contract are in effect that the lands shall be bid off for the Board of Commissioners instead of for the Trustees of the Internal Improvement Fund, that the lands theretofore bid off for the Trustees or the tax certificates representing such lands shall be transferred by the Trustees to the Board of Commissioners, and that an adjustment shall be made between the Board and the Trustees for which the Board shall issue certificates of indebtedness. The Board of Commissioners would be unable to pay acreage taxes on such lands as substantially the only funds out of which such taxes could be paid would be the taxes on other lands in the District, furthermore, there would be no purpose served in the payment by the Board of taxes which would be collected for the Board. The pleadings allege the facts in respect of the Trustees which show the bond contract and its impairment (R. 9-26, 27-31, 36-37, 39-40, 60-63, 220) and the truth of these facts is admitted by the motion of defendants to dismiss.

There is involved both the question whether the legislature of the State of Florida had the power to require the Trustees of the Internal Improvement Fund to pay the drainage taxes on the lands in Everglades Drainage District bid off for the Trustees at tax sales under the provi-

sions of the statute, and if it had such power, whether by appropriate and effective provisions of the statute it has required the Trustees to pay the acreage taxes on such bid off lands.

In *Martin v. Dade Muck Land Co.*, 95 Fla. 530, 116, So. 449, the Supreme Court of Florida decided that the legislature had the power to enact such a provision. In the *Dade Muck Land* case, the plaintiff, an owner of land in the District subject to acreage taxes, filed a bill in equity in the state court asking the court to determine on various grounds that a Florida statute enacted in 1927 (Chapter 12016) was unconstitutional and to enjoin its enforcement. The statute authorized the issue of \$20,000,000 of additional bonds of Everglades Drainage District; no bonds were issued under this statute and it was later repealed. The statute provided, in part (95 Fla., at p. 553):

"The lists of properties and taxes thereon in the several counties shall be certified to the Tax Assessors in the same manner, as near as may be, that land lists are now certified under Section 1167 of the Revised General Statutes of Florida and in all other respects the law governing the assessment and collection of drainage taxes, and the sale of lands for the non-payment of such taxes in the Everglades, shall be and is hereby made applicable, as near as may be, to the tax hereby authorized for the payment of such bonds, except that with respect to such tax, the Trustees of the Internal Improvement Fund shall, in the absence of other satisfactory bidders, buy in any lands sold for such tax, paying immediately the amount thereof, using any funds in hand, or to be appropriated by the State for such purposes. * * *"

One of the prayers for relief was "That all of the provisions of said act * * * which purport to bind the Trustees of the Internal Improvement Fund of the State of

Florida to pay the said taxes, * * * may be determined to be unconstitutional * * *. A demurrer of the defendant Trustees of the Internal Improvement Fund was based upon the following ground, among others (p. 549):

"8. The State has lawful power to enact a law providing for a Special Drainage District in which such State is a property owner, and to make a contract with the holders of bonds to be used against such district that in the event any lands owned in such district are sold for special improvement taxes assessed on lands in the district that such lands shall be bought in and the taxes paid by the Trustees of the Internal Improvement Fund out of any moneys in hand, or to be appropriated by the State for such purpose."

The court, after giving a restricted meaning to the words in the statute "or to be appropriated by the state for such purposes", sustained the demurrer of the Trustees to the bill, and thus held that there was power in the legislature to enact the foregoing provision. *Trustees I. I. Fund v. Bailey*, 10 Fla. 112, also upheld such power of the legislature.

In considering the meaning and effect of the provision in the Everglades statute for bidding off the lands for the Trustees, instead of for the Board of Commissioners, there arises at the outstart the question, what was the purpose of the change, made at a time when the Board of Commissioners of the District under the authority of the legislature were seeking to sell bonds of the District and their efforts to sell bonds for several years prior thereto had been unsuccessful. Since the purpose of the change in the statute was to improve the statute in order to enable the District to sell bonds, there could be no doubt that imposing upon the Trustees instead of the Board of Commissioners, the obligation to pay taxes upon the bid off lands would

be helpful. The statutory arrangement was not to sell the lands at tax sales to the highest bidder but to sell only if at least the amount of defaulted taxes were bid. This provision was made for the benefit of the bondholders. If the legislature intended that the Trustees were to be under no obligation to pay taxes on the bid off lands then there was no purpose whatever in making the 1917 amendment to the statute for the provision then contained in the statute that the lands should be bid off for the Board of Commissioners accomplished that result. On the other hand, if the legislature, as an inducement to the purchase of bonds, intended that the bid off lands should be subject to the annual acreage taxes, it was necessary to make an amendment in the statute, such as was in fact made, since the lands when bid off for the Board of Commissioners under the then existing provision of the statute were in effect exempt from the taxes solely because of the inability of the Board to pay such taxes. Since the statute has expressly provided that all the lands in the District are subject to the acreage taxes expressly including lands held by the Trustees, the lands bid off for the Trustees, who are under no such inability to pay taxes as the Board of Commissioners, are subject to the taxes because they are not expressly excepted and there is no basis in the statute for an implied exception.

It was natural to provide as a means of procuring the sale of bonds that the Trustees should pay taxes on bid off lands, since the effort to sell bonds of the District had been unsuccessful, the State is under obligation to the United States by the terms of the Federal statute granting the lands to improve these swamp and overflowed lands, *McGee v. Mathis*, 4 Wall. 143; *Mills County v. Burlington & M. R. R. Co.*, 107 U. S. 557, the State was confronted with the problem of improving these lands and if bonds were not

sold the assets of the Trustees, as in the past, would be the source from which the improvements would be made as supplemented by the acreage taxes. The Trustees as the agents of the state were under duty to drain and reclaim the swamp and overflowed lands, and had administered these swamp and overflowed lands as the agents and representatives of the State of Florida since the year 1855 (R. 45, 19). In *Trustees I. I. Fund v. Root*, 63 Fla. 666, 58 So. 371, the nature and extent of the improvements in these lands which the Trustees had made before Everglades Drainage District was formed are set forth. At the time the District was formed, the Trustees were very substantial landowners in the District (R. 5, 19), and on such lands they were required by the Everglades bond contract statute (Chapter 6456, Sec. 5 as amended; R. G. S. Sec. 1164 at page 730) to pay acreage taxes. Until the bonds of the District were sold to the public, the Trustees, out of such funds as they had available for that purpose, carried out their duty of draining and reclaiming the lands. The bonds of the District were issued under the bond contract statutes (Chapter 6456, Laws of Florida of 1913 as amended; R. G. S. Secs. 1160-1188 as amended) in order that their proceeds might be used in making the improvements in the District more rapidly than they could be made solely out of the funds of the Trustees, *Rorick v. Board of Commissioners*, 57 F. 2d 1048, 1051. The proceeds of the acreage taxes levied in said statute in turn were to be used for the payment of the bonds (Chapter 6456, Secs. 24, 19 as amended; R. G. S. Secs. 1183, 1178). For the protection of the bonds the statute provided that the lands were not to be sold at tax sales for less than the amount of the defaulted acreage taxes and if such amount were not bid, the statute required (Chapter 6456, Sec. 12 as amended; R. G. S. Sec. 1171) the lands to be bid off for the Trustees,

who were not permitted to sell them for less than the amount of the defaulted taxes (Chapter 6456, Sec. 16 as amended; R. G. S. Sec. 1175) and after the two-year period of redemption were required to pay the taxes thereon. (Chapter 6456, Sec. 5 as amended; R. G. S. Sec. 1164 at page 730).

It has been contended by defendant Trustees that they are not required to pay the tax sales certificates representing the amount of defaulted taxes on the bid off lands at the time of the tax sale, or to pay the subsequent acreage taxes thereon because the bid off lands were held by the Trustees in a different capacity from that in which they hold other lands in the District. This is unsound and there is no basis for such distinction because the Everglades statutes under which the bonds were issued does not provide that the Trustees hold the lands bid off for them at tax sales in a different capacity or upon a different trust from that in which they hold other lands in the District. When the Everglades Drainage District was formed in 1913, the statutes of the State of Florida creating the Trustees of the Internal Improvement Fund and vesting in them the swamp and over flowed lands and other lands of the state, had been in force many years and the Trustees of the Internal Improvement Fund were a well known institution in Florida. Although the name "Trustees of the Internal Improvement Fund" is used many times in the Everglades statutes including the provision for bidding off tax delinquent lands for the Trustees, nowhere in the Everglades statutes are stated even the names of the individuals who compose the Trustees as such; there is an implied reference made (Chapter 6456, Sec. 5 as amended; R. G. S. Sec. 1164, at page 730) to the statute which created the Trustees (Chapter 610, Laws of Florida, 1855). The Trustees of the In-

ternal Improvement Fund named in the statutes under which the bonds of Everglades Drainage District were issued and the lands are bid off at tax sales are the Trustees named in the statute creating the Trustees of the Internal Improvement Fund, and the duties of the said Trustees in respect of the tax delinquent lands in Everglades Drainage District bid off for them and held by them are the same as their duties in respect of other lands in the District as defined by the statute creating the Trustees of the Internal Improvement Fund, except to the extent that such duties are qualified by the Everglades statutes authorizing the issue of the bonds of the District and providing for the bidding off of the lands. The important qualification in the duties of the Trustees in respect of the bid-off lands, made by the statutes under which the bonds were issued, are that during the two year period of redemption provided in those statutes (Chapter 6456, Secs. 12, 16 and 5 as amended; R. G. S. Secs. 1171, 1175 and 1164), the Trustees are directed to hold the bid off lands in like manner and with like effect as lands sold to the State for non-payment of State and County taxes were held by the State as then provided by law, that the Trustees shall not sell the bid-off lands for less than the amount of the defaulted taxes and the Trustees are affirmatively required to pay the taxes on the bid-off lands.

One of the principal contentions of the Trustees is that they hold the lands bid off for them in this District in the same manner as the State holds lands bid off for it for non-payment of State and County taxes. The Trustees thus try to ignore the express provision of the Everglades statutes that the period is limited to two years, in which the Trustees hold lands bid off for them in this District like the State holds lands bid off for it for non-payment of State and County taxes. It is unnecessary for the pres-

ent purpose to inquire how the State holds lands bid off for it since we are concerned here only with the period in which the Trustees hold the bid off lands after the expiration of such two year period in which the Trustees hold like the State. Since the statute divides into two parts the time in which the Trustees hold the bid-off lands, first, the two year period in which they hold as the State holds lands bid off for it, and second, the remaining time in which they hold as such Trustees, as defined in the statutes creating them except to the extent modified by the provisions of the Everglades statutes, it necessarily follows that the Trustees in the second period hold the lands in a different manner from that in which they hold them in the first period. The two year period was provided in the statute to give the Trustees opportunity to sell the lands and thus decrease the burden of taxes imposed upon them. This two year period of redemption, which is part of the bond contract, could not be extended by subsequent statute after the bonds were issued without impairing the obligation of the bond contract, *Howard v. Bugby*, 24 Ho. 461; *Barnitz v. Beverly*, 163 U. S. 118; *Hull v. State of Fla.*, 29 Fla. 79; *State ex rel. Stieff v. Bradshaw*, 39 Fla. 137. After the two year period the Trustees hold the bid off lands just as they would hold from the time the lands were bid off for them if the Everglades statute had made no provision for a two year period and had made no reference to lands bid off for the State for non-payment of State and County taxes.

When the change was made in the Everglades statute directing the bidding off of the lands at tax sales for the Trustees (Chapter 6456 as amended by Chapter 7305, Laws of Florida of 1917), other provisions were thereby made necessary in the Everglades statute and were inserted which also indicate that the Trustees were to pay taxes

the bid off lands after the two year period. One of the important amendments of the statute made because of the provision for bidding off the lands for the Trustees instead of for the Board of Commissioners is that the proceeds of sale by the Trustees of bid off lands held by them shall be "applied by the said Trustees in the payment of drainage taxes or assessments or other obligations of said Trustees." This provision is consistent with the provision of the statute which levies the acreage taxes upon all lands in the District including the lands of the Trustees. The Trustees are thus permitted by the statute to apply the proceeds of sales of bid off lands to the payment of their own obligations, only because the Trustees hold the bid off lands as owners thereof. Before the amendment of 1917, providing for the bidding off of the lands for the Trustees, the statute (Chapter 6456, Sec. 16) provided that the lands should be bid off for the Board of Commissioners and in substance that the proceeds of sale of the lands should be expended by the Board for its own purposes. The foregoing provision of the statute also permits the Trustees to apply the proceeds of the sale of the bid off lands to the payment of drainage taxes. If the bid off lands were held by the Trustees for the District as contended by defendants, the proceeds of the sales of the bid off lands would be held by the Trustees, not as the statute provides, to be applied in payment of drainage taxes or other obligations of the Trustees, but as the funds of the District under obligation on the part of the Trustees to turn the funds over to the Board of Commissioners as their funds. The 1917 amendment also made a similar change in respect of the disposition of amounts paid in redemption of tax sale certificates representing bid off lands (Chapter 6456, Sec. 17 as amended; R. G. S. Sec. 1176).

The Trustees by their conduct in administering the Everglades statute, during the time bonds of the District were being issued, made the interpretation thereof for which we here contend (R. 27). The question whether the Trustees were required to pay immediately, like individual purchasers at the tax sales, the amount named in the tax sale certificate representing the bid off lands and to pay immediately the acreage taxes thereon, or were required to make such payment only two years after the lands were bid off to them, was considered at a meeting of the Trustees held in March, 1924 (R. 27-29). In the minutes of that meeting it is stated that the Trustees and their counsel hold that the law contemplates and provides that the amounts involved in the drainage tax certificates representing bid off lands should not be paid by the Trustees "until such certificates have ripened into title in said Trustees, such ripening into title being two years from the date of such tax sales." We are unable to make a better statement of our position on this appeal than is made by the Trustees and their counsel in their minutes. Not only was the Attorney General of the State one of the Trustees, but in the year 1917 when the amendment was made to the statute providing for bidding off of the lands for the Trustees, he was one of the Board of Commissioners who presented and recommended the enactment of this amendment for the purpose of enabling the District to sell bonds. A resolution adopted by the Trustees is set forth in the same minutes (R. 28-29) to the effect that if necessity arose, they would not, in paying acreage taxes on the bid off lands, take advantage of the two year period given them by the statute, but would anticipate the time when they should be required to pay.

In accordance with the foregoing interpretation of the statutes made by the Trustees and their counsel as recorded

in the minutes, the Trustees followed the practice of paying the taxes on the bid off lands. It is alleged in the complaint (R. 31) that the Trustees of the Internal Improvement Fund have paid for all tax sale certificates bid off for them to and including the sales made for the 1927 drainage taxes and have paid the drainage taxes on the lands represented by such certificates, but that the Trustees have not paid for the tax sale certificates representing lands bid off for them on sale for the 1928 drainage taxes and subsequent drainage taxes. This is admitted by the motion to dismiss. Thus, as officers of the State, with the duty of administering the statute, the Trustees by their conduct made a practical interpretation thereof. In fact, the Trustees, by motion dated June 16, 1925 (R. 29-31), in order to induce bond purchasers to purchase additional bonds, further stated their position, under the terms of the Everglades statute as amended, by agreeing to pay promptly for tax sale certificates at the time delinquent lands are bid off to them by the tax collectors just as other bidders are required to pay for such certificates. This construction was made unanimously by the Trustees including the Attorney General (R. 30-31) and was at no time thereafter questioned until long after all outstanding bonds had been issued and sold. The prospective bond purchasers addressed a letter to the Trustee dated June 15, 1925 (R. 30), which stated in part:

" * * * We hereby confirm the agreement of your Board on June 12th, that because you own approximately 1,000,000 acres of land in said Drainage District and are interested in its development, that as an inducement for us to submit said proposition and to purchase said bonds therein specified, your Board agreed to promptly pay the Drainage Board for all Everglades Drainage Tax Sale Certificates heretofore bid off to you by the Tax Collector, and to hereafter at the time of the tax sales pay the Everglades

Drainage District taxes on all lands bid in to you by the Tax Collectors. * * *

A resolution was unanimously passed by the Trustees that the foregoing agreement be adopted (R. 30, 31):

While the foregoing resolution of the Trustees, voted for by all the Trustees including the Attorney General shows the great interest of the Trustees in promoting the sale of bonds of the District, its purpose here is to indicate the interpretation which the Trustees made of this bid off provision of the statute; they interpreted it to mean what we here contend it does mean, namely that there is an obligation upon the Trustees to pay for tax sale certificates and to pay taxes on the bid off lands two years after they are bid off. Their agreement under the foregoing resolution was to make the payments at an earlier time.

The Attorney General of Florida in the written opinion which he gave in every case to induce the sale of the bonds of the District (R. 16) stated, as alleged in the complaint, "that he unqualifiedly approved the collectibility of said bonds and of the sufficiency of the taxing power back of them, and that he made such statements in reliance upon the considerations enumerated in this paragraph of the complaint and similar considerations contained in the statutes under which the bonds were issued." This is admitted by the motion of defendants to dismiss.

The practical interpretation of a statute made by state officers whose duty it is to administer the statute is the best evidence of its meaning, especially where, as in the present case the statute has been reenacted from time to time while such interpretation is being made.

National Lead Co. v. United States, 252 U. S. 140, 145-6;

United States v. Missouri P. R. Co., 278 U. S. 269, 280;

Brewster v. Gage, 280 U. S. 327, 336;

United States v. Shreveport Grain Co., 287 U. S. 77, 84;

McFeely v. Com'r of Internal Revenue, 296 U. S. 102, 108;

Bloxham v. Consumers' Elect. Light and Street R. Co., 36 Fla. 519, 540.

During the whole period in which bonds of the District were being issued these five state officers in the capacity both of Trustees of the Internal Improvement Fund and of Board of Commissioners (R. 4), if not indeed also as state officers without regard to the foregoing capacities, were engaged in administering this District and in selling bonds of the District to the public. They presented to the legislature the amendment providing for the bidding off of the lands for the Trustees instead of for the Board of Commissioners, they recommended it and applied for its adoption, and they then made their own practical interpretation of it in their direct dealings with the prospective purchasers of bonds for the purpose of inducing them to purchase bonds of the District in reliance upon such interpretation. Such action was joined in by the Attorney General as one of the Trustees. These Trustees now ask this court to make an interpretation of the 1917 amendment in conflict with the interpretation made by such Trustees themselves in administering the statute (R. 27-31) and in their dealings with bondholders for the purpose of inducing them to purchase bonds, and the purpose of their present contention is to deprive the bondholders of that security which they then assured them they would receive if they purchased the bonds.

Not only are the lands in the District, when bid off for the Trustees of the Internal Improvement Fund, subject to the lien of the acreage taxes but a mandatory duty

is imposed by the bond contract statutes upon the Trustees to pay such taxes. After providing that all lands in the District described in the statute are subject to the acreage taxes therein levied, the statute expressly provides (Chapter 6456, Sec. 5 as amended; R. G. S. Sec. 1164 at page 730) that the lands within the District held by the Trustees "shall be subject to the taxes hereby imposed, and the said Trustees in furtherance of the trusts upon which said lands are held are hereby authorized and empowered to pay the same out of any funds in their possession derived from the sale of lands or otherwise". The foregoing words impose a mandatory duty upon the Trustees to pay such taxes:

Municipality of Pensacola v. Lehman, 57 Fed. 324 (C. C. A. 5);

Board of Supervisors of Rock Island County v. U. S., 4 Wall. 435;

Chase v. United States, 256 U. S. 1;

Virginia v. West Virginia, 246 U. S. 565;

Galena v. United States, 5 Wall. 765;

S. A. L. Ry. Co. v. R. R. Commissioners, 100 Fla. 1027.

Since these were the lands of the State of Florida administered by the Trustees as the agents of the State, there would be no implication that the Trustees in the exercise of their discretion by failure to pay taxes on these State lands could cause them in effect to be lost to the State. In the section of the statute imposing taxes upon all the lands within the District (Chapter 6456, Sec. 5 as amended; R. G. S. Sec. 1164) the only landowners named are the Trustees and the only reason for naming the Trustees is in order to impose upon them the obligation and duty to pay the taxes.

The statutory arrangement made necessary a mandatory duty on the part of the Trustees to pay the taxes on the bid-off lands, since the provision for bidding off for the Trustees was part of the arrangement to insure payment of the taxes, obviating the necessity for a sale of the lands at tax sales to others for less than the amount of the delinquent acreage taxes. The statute did not contemplate a sale of the bid-off lands while held by the Trustees for less than the defaulted taxes; it did provide that the Trustees must pay the taxes on the bid-off lands. If the bid-off lands are merely subject to the acreage taxes while held by the Trustees but the Trustees are not required to pay the taxes, upon default in payment while the Trustees hold the lands, there would be no right to enforce the payment of the taxes except by sale by the tax collector at tax sale. In the event that the Trustees have no assets, or resources out of which to pay the taxes, a difficulty would arise which, upon application by bondholders, a court would remedy probably by permitting the sale of the lands held by the Trustees for less than the amount of the defaulted taxes.

The Everglades statutes under which the bonds were issued in effect conditionally relieved the Trustees of the burden imposed upon them by the statute of 1855 of applying their assets to the draining of the swamp and overflowed lands and thereby made available for such purpose the proceeds of the bonds authorized to be issued and sold to the public, but the Everglades statute reimposed upon the Trustees a part of their burden to the extent that they were required to pay acreage taxes upon all lands in the District held by them, and if lands in the District were offered for sale by tax collectors and could not be sold for the amount of the defaulted acreage taxes, the Trustees reacquired the

lands and thereafter held them under obligation to pay the taxes annually levied thereon by statutes which are part of the bond contract.

If the Trustees hold the bid off lands as Trustees for bondholders or for the Board of Commissioners, as contended by the attorney for defendant Trustees, and are not required to pay the taxes on the bid off lands, then it is impossible to carry into effect certain vital parts of the Everglades statute authorizing the issue of bonds and the levy of acreage taxes. The amount of lands in the District which would be bid off for the Trustees at tax sales during the period in which the bonds of the District should be outstanding could not be determined in advance; yet the statute provides (Chapter 6456, Sec. 19, as amended; R. G. S. Sec. 1178) that when additional bonds are authorized to be issued, such authority shall be accompanied by the levy of additional taxes sufficient to pay the bonds. If the foregoing words of the statute do not impose a mandatory duty upon the Trustees to pay the taxes upon the bid-off lands held by them, which they are required to hold until they can sell them for the amount of the defaulted taxes (Chapter 6456, Sec. 16, as amended; R. G. S. Sec. 1175), it would have been impossible, at the time the Amendment to the statute authorized the issue of additional bonds, to determine the amount of additional taxes which it was necessary to levy in order to provide sufficient funds to pay the bonds. One of the purposes of the Everglades statute, and one of the inducements to the public to purchase the bonds of the District, was an assurance that at all times there would be sufficient proceeds of taxes to meet bond requirements to the extent that the acreage taxes and the assets of the Trustees could give such assurance.

As additional bonds were issued, additional acreage taxes levied, and the zones into which the lands of the Dis-

tract are divided were changed, the same language in the statute was continued, levying acreage taxes upon all the lands in the District including the Trustees' lands, and the lands which theretofore had been bid off for the Trustees were expressly included in the statute by description as subject to the additional acreage taxes. The bid off lands were bid off in the name of the Trustees, they were entered on the tax rolls in the name of the Trustees, and this constituted the authority of the tax collectors to collect the acreage taxes levied on such lands from the Trustees. If the present contention of the Trustees were accepted, then at the time bonds were sold, the statute provided that all the lands in the District were subject to the payment of acreage taxes when that part of the lands bid off to the Trustees were not in fact so subject.

The District Court herein, upon the former application, determined, one judge dissenting (*Rorick v. Board of Commissioners*, 57 Fed. 2d 1048, 1061), that the Trustees of the Internal Improvement Fund held the lands bid off for them at tax sales under the Everglades statute in furtherance of the trusts upon which the Trustees held lands under the statute of 1855 under obligation to pay acreage taxes thereon. In the majority opinion, it is stated:

"Viewing the history of this legislation in the light of the allegations of the bill of complaint, it appears that by 1917 it had become apparent that drainage taxes might remain unpaid to such an extent that funds of the district would be insufficient to meet bond requirements if additional bonds were issued, and that, before additional bonds would be salable, it would be necessary to guard against such a situation. This was undertaken by requiring the trustees of the internal improvement fund, instead of the board of commissioners, to become the purchasers of all tax certificates for which there was no other purchaser, thus preventing tax default and consequent depletion

of the district fund available for interest and sinking fund requirements. The provisions of the act of 1917 relating to the trustees are harmonious with the purposes of the internal improvement fund as defined by chapter 610, Acts 1855. See *Martin v. Dade Muck Land Co.*, 95 Fla. 530, 116 So. 449. (p. 1060; R. 103104)

“These and other provisions, when adjusted to their proper perspective in relation to the entire Everglades legislation, lead us to hold that, so far as the bond contract is concerned, lands thus bid in for the trustees (commonly referred to as ‘certificated lands’) become ‘lands within the Everglades Drainage District ‘held’ by the Trustees of the Internal Improvement Fund,’ within the meaning of section 5 of the original act, two years after the date of the certificate, when title vests in the trustees if the certificate be not sooner redeemed. (p. 1061; R. 106)

“As these provisions are a part of the bond contract, it is the duty of the trustees to pay drainage taxes levied on such lands from and after the time when title vests in the trustees, pursuant to the act under which plaintiffs’ bonds were issued, such payment to be made from funds derived by the trustees from ‘the use or sales of swamp and overflowed lands held by the trustees * * * under the trusts declared in chapter 610, Acts 1854-1855 * * * and subsequent amendatory and supplemental statutes.’ *Martin v. Dade Muck Land Co.*, 95 Fla. 530, 116 So. 449, headnote 3. * * *” (p. 1061; R. 106)

In the dissenting opinion (57 Fed. 2d 1048, 1063; 109-110), Judge BRYAN states that the Trustees hold the bid-off lands subject to the owner’s right of redemption which continues until the land is sold, and during such period hold the lands “for the bondholders and other creditors of the drainage district”, even though Judge BRYAN himself states:

"... * The Compiled General Laws provide that lands upon which drainage taxes are delinquent may be sold, and if there is no private bidder, shall be 'bid off' by the tax collector for the Trustees to be held by them for the two year period allowed for redemption 'in like manner and with like effect as lands sold to the State for non-payment of State and County taxes are held by the State.'" (R. 110.)

The fundamental error in the dissenting opinion is that it interprets the statute as providing that the Trustees hold the bid off lands as the State holds lands bid off for it, not for the two year period of redemption expressed in the statute but during the whole period in which the Trustees hold the lands. For his conclusion Judge BRYAN relies upon *Hightower v. Hogan*, 69 Fla. 86, 68 So. 669, which applied solely to a statute in respect of lands bid off for the State for non payment of State and County taxes; in the State statute it is provided that the right to redeem lands while held by the State continues until the date when a deed of conveyance is executed to a purchaser of the lands from the State, and for this reason the *Hightower* case has no application to the Everglades Statute, which provides that the Trustees hold like the State only during the two year period of redemption provided in the Everglades statute. The *Hightower* case is merely the application of the different provision of the state statute to a different matter.

Judge BRYAN states in his dissenting opinion that the Trustees are not required to pay the delinquent drainage taxes on the lands bid off for them until they sell such lands; however, this is the bare statement by him of a conclusion to which no provision of the statute furnishes support, and on the contrary as we have shown the statute expressly levies acreage taxes upon all the lands in the District. Judge BRYAN also states that the provision in

the Everglades statute subjecting land within the District held by the Trustees to drainage (acreage) taxes refers to land owned by the Trustees, in their own right, and not to lands bid off for the Trustees; but there is no provision of the statute to that effect and Judge BRYAN refers to none. Lastly Judge BRYAN states that if it had been the intention of the legislature to bind the Trustees as purchasers of lands upon which drainage taxes had not been paid, there should and doubtless would have been a plain and unequivocal provision to that effect. But there is such a provision as we have shown. It is admitted by the Trustees that the lands other than bid off lands held by the Trustees, are subject to the annual acreage taxes. If the Trustees purchased privately lands in the District or if they retook lands in the district which they had sold, such lands obviously would be held by the Trustees and would be subject to the annual acreage taxes although not held by the Trustees at the time the District was formed. There is no distinction under the language of the statute between lands held by the Trustees at the time the statute was first enacted and lands thereafter acquired by the Trustees, which could be worked out through the word "held" in the statute as applied to Trustees' lands in the District. All lands in the District are subject to the payment of the annual acreage taxes and this includes all lands held by the Trustees however acquired and the Trustees are required to pay such taxes.

The state court in *State ex rel. Board of Commissioners v. Scholtz*, 112 Fla. 756, 150 So. 878 (November 1933) has made a decision on the present point which requires consideration. At the time the federal district court herein made its decision on the former application of plaintiffs for interlocutory injunction, both the Board of Commissioners and the Trustees of the Internal Improvement

Fund were parties defendant herein, and in their motions to dismiss and by the answers which they have filed, took the position that the Trustees of the Internal Improvement Fund are under no obligation whatever to pay acreage taxes on lands in the District bid off for them (R. 111, 117, 130, 133, 144, 150; R. 167, 179, 183). The Board of Commissioners including the five principal state officers who constituted the Trustees of the Internal Improvement Fund, had caused to be introduced and recommended to the legislature the statute which purports to relieve the Trustees from the obligation to pay taxes on the bid off lands, and upon the application of the Board of Commissioners the statute was enacted by the legislature. After the decision by the district court on the former application herein, the Board of Commissioners, as the sole relators, brought a mandamus proceeding in the Supreme Court of Florida, in which the Trustees of the Internal Improvement Fund were the sole respondents, for the purpose of compelling the respondent Trustees to accept the tender of a tax sale certificate in respect of lands bid off for the Trustees of the Internal Improvement Fund and thereafter, pursuant to the statute of 1931 (Chapter 14717, Laws of Florida of 1931) transferred by the Trustees to the Board of Commissioners, and to compel the Trustees to pay for the tax sale certificate together with the amount of the acreage taxes which had subsequently accrued and remained unpaid on the land covered by the certificate. The sole respondents in that proceeding, the Trustees of the Internal Improvement Fund, filed a motion to quash the alternative writ of mandamus which the court granted and thereby refused to issue a peremptory writ of mandamus. In its opinion, *State of Florida ex rel. Board of Commissioners v. Sholtz*, 112 Fla. 756, the court, after stating that the sole question presented is whether the Trus-

tees are required to accept and pay for tax certificates issued by tax collectors in respect of lands bid off for and the subsequent taxes said "We are unable to agree with the majority opinion in the case of *Rorick v. Board of Commissioners of Everglades Drainage District* reported in 57 Fed. 2d 1048, wherein opposite conclusions are reached". On this point the state court adopted the dissenting opinion of the district court herein on the first hearing except that it stated that in its opinion the Trustees hold the bid off lands "in trust for the Commissioners of Everglades Drainage District", instead of for the bondholders and creditors as Judge BRYAN had concluded.

The decision of the state court in the *Sholtz* case should not be followed by this Court not only because this Court will decide for itself the federal question involved as to the alleged impairment of plaintiff bondholders' contracts, including the determination of the questions what was the contract, what was its proper construction and effect, and what was its obligation impaired by subsequent legislation as in *Appleby v. New York*, 271 U. S. 364, but also because the rights of bondholders under their bond contract had become vested long before the 1931 Everglades statute was passed, the federal district court herein had interpreted the state statute and made its decision more than a year before the *Sholtz* case was decided in the state court and such interpretation is sound, and because of the manner in which the *Sholtz* decision was secured. We contend that the mandamus proceeding in the *Sholtz* case did not involve any actual controversy, since the Board of Commissioners and the Trustees were the only parties to the proceeding, and in the present suit the Board of Commissioners as a defendant has always taken and now takes a position opposite to that which it pretended to take as relator in the mandamus proceeding in the *Sholtz* case.

and precisely the same position which the Trustees have taken in the present case and took in the *Sholtz* case. The Board of Commissioners could not seriously assert that they were endeavoring in the *Sholtz* case to have the state court hold that the Trustees are required to pay taxes on the bid off lands. Anyone having the duty of selecting a proper person to present such a matter to a court would not select for that purpose the Board of Commissioners, who had caused the statute of 1931 to be passed for the purpose of relieving the Trustees from such liability, and whose desire and purpose at all times after the passage of the 1929 statute was to secure the result that the Trustees were not under obligation to pay acreage taxes on the bid off lands (R. 37). The attorneys for the Board in the *Sholtz* case were the same attorneys who represented the Board at that time in the present case and who prepared the former motion to dismiss and the answer of the Board in the present case in which the Board alleged that the Trustees are not under obligation to pay taxes on the bid off lands (R. 176-177, 179, 183). The attorneys for the relator Board, as well as the attorneys for the respondent Trustees, desired the adverse result in the *Sholtz* case which they received, and they were not qualified under the circumstances to present the matter properly to the state court, resulting in lack of proper pleading of the pertinent facts and thorough argument for the assistance of that court.

Where the question is whether a contract has been impaired by subsequent legislation contrary to the contract clause of the Federal Constitution, this Court, while it will give proper consideration and due weight to the adjudication of the state court, will determine independently thereof whether there is a contract, what is its obligation and whether such obligation has been impaired.

McCullough v. Virginia, 172 U. S. 102;

Coombes v. Getz, 285 U. S. 434, 441;

Appleby v. New York, 271 U. S. 364, 379;

New York Rapid Transit Corp. v. New York, 303 U. S. 573, 593.

No subterfuge in securing a decision from a state court where there is no real controversy and without proper pleadings and adequate and effective presentation by counsel seeking earnestly and sincerely the result which he pretends to seek would be regarded by this court as binding upon it, especially in a case involving a federal question. In *Lord v. Veazie*, 8 How. 251, Mr. Chief Justice TANEY, after referring to the fact that the plaintiff and defendant were attempting to procure the opinion of the court upon a question of law, in the discussion of which they have a common interest opposed to that of other persons who are not parties to the suit and had no opportunity of being heard there in defense of their rights, said:

“ * * * The objection in the case before us is, not that the proceedings were amicable, but that there is no real conflict of interest between them; that the plaintiff and defendant have the same interest, and that interest adverse and in conflict with the interest of third persons, whose rights would be seriously affected if the question of law was decided in the manner that both of the parties to this suit desire it to be.

“ A judgment entered under such circumstances, and for such purposes, is a mere form. * * * ”

In the present suit both the Board of Commissioners and the Trustees have been joined and served as necessary parties defendant, and have actively participated in this case and the interpretation of the statute has been and is necessary for the determination of the case. The man-

mandamus proceeding in the state court was instituted by the Board of Commissioners and the Trustees, being the two principal parties defendant to the present suit in the Federal District Court, for the obvious purpose of having the state court make an interpretation of the Everglades statute different from that which the federal district court herein had already made, and in effect reviewing the decision of the district court. No bondholder was or could have become a party to the mandamus proceeding in the state court, since under the law of Florida there is no right to intervene in such a mandamus proceeding. Although both the Board of Commissioners and the Trustees, the only parties to the mandamus proceeding, were seeking, on their inadequate presentation, the interpretation of the statute which the state court made, no opportunity was given to the bondholders of the District to be heard in a matter of such vital importance to them. Under the doctrine of *Erie R. R. Co. v. Tompkins*, 304 U. S. 64, this Court is not required, nor has its power or jurisdiction been lessened, to determine whether the obligation of a bond contract has been impaired or whether it will follow the interpretation by a state court of a statute constituting part of the bond contract.

The Trustees now urge that if they are required to pay for the tax sale certificates and subsequent taxes on the bid off lands, the provisions of the Constitution of the State of Florida (Secs. 6 and 10, Article IX) prohibiting the issue of bonds of the State except for certain limited purposes, and providing that the credit of the State shall not be pledged or loaned, would be violated. This is a contention that an obligation of the Trustees of the Internal Improvement Fund is in substance a bond of the State of Florida, and that the payment of taxes on lands bid off for

and held by the Trustees is a pledge or loan of the credit of the State. The Trustees will not contend that all obligations incurred by the Trustees violate the State Constitution since the Trustees have incurred obligations of all kinds in the many years in which they have administered these lands of the State. Yet, for the present purpose, there is no difference between the obligations of the Trustees to pay taxes on the bid off lands, their obligation to pay taxes on the lands in the District other than bid off lands or obligations of other kinds incurred by the Trustees. The state court has held that the obligation to pay taxes on lands in the District other than bid off lands held by the Trustees is valid. *Everglades Sugar & Land Co. v. Bryan*, 81 Fla. 75, 87 So. 68; *Berry v. Hardee*, 83 Fla. 531, 91 So. 685; the state court has also held that the obligation of the Trustees to pay taxes on bid off lands is valid. *Martin v. Dade Muck Land Co.*, 95 Fla. 530, 116 So. 449. The extent to which the Trustees may incur valid obligations and pledge their assets is also shown in *Trustees v. Bailey*, 10 Fla. 112. During the period in which the Trustees were paying the taxes on the bid off lands, the various Attorneys General of the State who were Trustees and as such participated in such payments, did not hold the opinion that such payments violated the State Constitution. When each of these Attorneys General in his written opinion stated as an inducement to the public to purchase the bonds, that "he unqualifiedly approved of the collectibility of said bonds and of the sufficiency of the taxing power back of them" (R. 16) he did not hold the view of the present counsel for the Trustees.

A decree enjoining the Trustees from acting under the unconstitutional statute would not violate the 11th amendment of the Constitution of the United States as has been

contended by the Trustees; public officers cannot claim exemption from suit while acting under an unconstitutional statute; *Hopkins v. Clemson Agricultural College*, 221 U. S. 636; *Tanner v. Little*, 240 U. S. 369; *Gunter v. Atlantic Coast Line R. R. Co.*, 200 U. S. 273; *Sterling v. Constantin*, 287 U. S. 378; *Trustees of Internal Improvement Fund v. Barley*, 10 Fla. 112. In the *Hopkins* case, Mr. Justice LAMAR said:

"But a void act is neither a law nor a command. It is a nullity. It confers no authority. It affords no protection."

There is however express consent that the Trustees may be sued, as held in the cases: *Internal Improvement Fund v. Gleason*, 15 Fla. 384; *Wilson v. Mitchell*, 43 Fla. 107, 30 So. 703; *Trustees of Internal Improvement Fund v. Root*, 59 Fla. 648, 51 So. 535; *Trustees of Internal Improvement Fund v. Root*, 63 Fla. 666, 58 So. 371; *Everglades Sugar & Land Co. v. Trustees I. I. Fund*, 81 Fla. 75, 87 So. 68; *Martin v. Dade Muck Land Co.*, 95 Fla. 530, 116 So. 449, and in the Everglades statute (Chapter 6456, Sec. 23 as amended; R. G. S. Sec. 1182) where it is expressly provided that the provisions of that statute shall constitute an irrevocable contract between the Board of Commissioners and the holders of bonds of the District and that any bondholder by suit may compel the performance by any officer or person named in the statute of the duties required by the statute to be performed in relation to the bonds.

The legislature had power to provide in the Everglades statute which formed part of the bond contract that the Trustees of the Internal Improvement Fund should pay taxes on the lands bid off for them at tax sales, it did so provide, and the subsequently enacted statutes which pro-

vided that the lands should be bid off for the Board Commissioners impaired the obligation of plaintiffs to contract.

II. The decree of the federal district court granting the motions of defendants to dismiss the bill of complaint and the supplemental bill denying the application of plaintiffs for an interlocutory decree enjoining the enforcement of the 1937 statute of the State of Florida, and denying the application of plaintiffs, to reinstate the former interlocutory decree enjoining the enforcement of the 1929 and 1931 statutes of the State of Florida, is erroneous.

The statutes of the State of Florida of 1929, 1931 and 1937 impair the obligation of plaintiffs' contract and deprive plaintiffs of their property without due process of law as shown under Point I of this brief. The decree of the District Court, in denying the application of plaintiffs for an interlocutory injunction and for reinstatement of its former interlocutory decree, as well as in granting motions of defendants to dismiss the bill and supplemental bills, is erroneous.

CONCLUSION

The decree of the district court is erroneous and should be reversed.

Dated, March, 1939.

Respectfully submitted,

WILLIAM ROBERTS,
W. H. WATSON,
SAMUEL PASCO,
Counsel for Appellants

==

S

Al

B

==

rd of
bond

urt,
miss
lls,
in-
ent
and
sin-
ing
ntes

and
d de-
ss of
ee of
ntiffs
nt of
g mo-
ental

eous

rs,

ellants.

FILE COPY

Office - Supreme Court, U. S.

FILED

MAR 17 1939

CHARLES ELMORE DROPLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM 1938

No. 554

H. C. ROBICK, JOSEPH R. GRUNDY and
J. R. EASTON,

Appellants,

v.

BOARD OF COMMISSIONERS of Everglades
Drainage District, etc., *et al.*,

Appellees.

APPEAL FROM DECREE OF SPECIALLY CONSTITUTED THREE
JUDGE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF FLORIDA.

APPENDIX OF STATUTES TO
BRIEF FOR APPELLANTS

WILLIAM ROBERTS,
W. H. WATSON,
SAMUEL PASCO,

Counsel for Appellants.



TABLE OF STATUTES

	PAGE
Revised General Statutes of Florida, 1920, Secs. 1160-1188, pp. 702-749 (referred to herein as "R. G. S."), being Chapter 6456, Laws of Florida of 1913 as amended -----	2
<div style="margin-left: 40px;">Certain original sections of Chapter 6456, before amendment, are set out herein:</div>	
Section 12 -----	9
Section 16 -----	12
Section 17 -----	15
Section 19 -----	17
Chapter 8412, Laws of Florida of 1921 -----	22
Chapters 10026 and 10027, Laws of Florida of 1925---	22
Chapter 13,633, Laws of Florida of 1929 -----	24
Chapter 14,717, Laws of Florida of 1931 -----	26
Chapter 17,902, Laws of Florida of 1937 -----	33

D
le
th
F
15
h
er
(
ce
w

IN THE
Supreme Court of the United States
OCTOBER TERM 1938

No. 554

H. C. RORICK, JOSEPH R. GRUNDY and
J. R. EASTON,

Appellants,

v.

BOARD OF COMMISSIONERS of Everglades
Drainage District, etc., *et al.*,

Appellees.

APPEAL FROM DECREE OF SPECIALLY CONSTITUTED THREE
JUDGE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF FLORIDA.

**APPENDIX OF STATUTES TO
BRIEF FOR APPELLANTS**

The original statute creating Everglades Drainage District, authorizing the issue of bonds of the District and levying acreage taxes on the lands within the District for payment of the bonds, was Chapter 6456, Laws of Florida, 1913. As amended by statutes enacted in 1915, 1917 and 1919, the original statute is set forth under the heading "Everglades Drainage District" in Revised General Statutes of Florida, 1920, Secs. 1160-1188, pp. 702-749. Referred to herein as "R. G. S."). Subsequent to 1920, certain of these sections of the Revised General Statutes have been further amended by statutes enacted in 1921, 1923

and 1925 which appellants hereinafter refer to and set out where they deem necessary. The foregoing sections of the Revised General Statutes of Florida of 1920, as so amended in 1921, 1923 and 1925, set forth the provisions of the Everglades statutes which were in effect during the time when bonds of the District were being issued. Since the above statutes, and also certain subsequently enacted statutes hereinafter referred to which latter statutes it is contended impair the obligation of appellants' bond contract, are long, appellants herein pursuant to Rule 27(f) of the Rules of the Supreme Court of the United States, set out in this appendix to their brief the statutes which are deemed by appellants to have an important bearing.

**Revised General Statutes of Florida of 1920,
Secs. 1160-1188, being Chapter 6456, Laws
of Florida, 1913 as Amended.**

Appellants first set out the original Everglades statute of 1913 (Chapter 6456) as amended, as set forth in Revised General Statutes of Florida, 1920, indicating and setting out where deemed necessary, the corresponding provision of Chapter 6456 of 1913 before it was amended.

R. G. S. SEC. 1160 (*Sec. 1 of Ch. 6456 as amended*):

"1160. Everglades Drainage District created; boundaries.—That for the purpose of draining and reclaiming the lands hereinafter described and protecting the same from the effects of water, for agricultural and sanitary purposes, and for the public convenience and welfare, and for the public utility and benefit, a drainage district is hereby established to be known and designated as the Everglades Drainage District, the territorial boundaries of which shall be as follows, to-wit:

Beginning at the northeast corner of township thirty-seven south, range thirty-nine east, thence west along the township line between townships thirty-six south and thirty-seven south to the northwest corner of township thirty-seven south, range thirty-one east.

Thence south along the range line between ranges thirty and thirty-one east to the northeast corner of township forty-two south, range thirty east; * * *

The remainder of this section, continuing the description of the boundaries of the District, is herein omitted.

R. G. S. SEC. 1161 (*Sec. 2 of Ch. 6456*):

"1161. Board of Commissioners of Everglades drainage governing board.—The Governor, the Comptroller, the State Treasurer, the Attorney General and the Commissioner of Agriculture of the State of Florida, and their successors in office, are hereby constituted the governing board of said district, and shall be designated the 'Board of Commissioners of Everglades Drainage District,' with all the powers of a body corporate, including the power to sue and be sued by said name in any court of law or equity, to make contracts and to adopt and use a common seal and alter the same at pleasure, to hold, buy and convey such personal or real property as may be necessary to carry out the purposes of this article, to appoint such agents and employees as the business of the Board may require, and to borrow money and to issue bonds therefor, as hereinafter provided, to enable the said board to carry out the provisions of this article."

R. G. S. SEC. 1164 (*Sec. 5 of Ch. 6456 as amended*):

"1164. Annual assessment of taxes levied; amount of acreage tax; lands held by trustees subject to tax.—For the purpose of constructing, completing and maintaining the works of drainage and reclamation hereby authorized for the benefit and protection of the lands

in said district annual assessments of taxes shall be and are hereby levied and imposed upon all the lands within said district, as follows, to wit: That upon the following described lands in said district, all being in townships south of the Tallahassee parallel, and in ranges east of the Tallahassee meridian, to wit:

In township forty-two, range thirty-one, sections twelve, thirteen, fourteen, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, thirty-four, thirty-five, and thirty-six; also

.

In range thirty-eight, between townships forty-three and forty-four, lots one, two, three, four, five and six, a tax of twenty-eight cents per acre is hereby levied annually for a period of three years beginning with and including the year 1920; and thereafter for a period of four years, beginning with and including the year 1923, a tax of thirty cents per acre annually is hereby levied upon said lands; and thereafter a tax of thirty-five cents per acre annually, beginning with and including the year 1927, is hereby levied upon said lands.

.

The lands within said district held by the trustees of the internal improvement fund shall be subject to the taxes hereby imposed, and the said trustees, in furtherance of the trusts upon which the said lands are held are hereby authorized and empowered to pay the same out of any funds in their possession derived from the sale of lands or otherwise."

The omitted parts of this section continue at length the description of all the lands in the District subject to taxes and the levy upon such lands of acreage taxes at the specified rates for each year, in manner similar to that appearing in the parts of the section herein set out.

R. G. S. SEC. 1165 (*Sec. 6 of Ch. 6456*):

"1165. Use of proceeds arising from acreage tax:—

The proceeds arising from the acreage tax levied by this article shall be used by the said board in the construction and maintenance of such canals, drains, levees, dikes, dams, reservoirs, sluices, revetments and other works and improvements as the said board may deem necessary or advisable to drain and reclaim the lands in said district, and to the continuation of the construction of such canals, dams, locks, levees and reservoirs as are now in process of construction within said drainage district, and to the purchase of lands or personal property as the board may deem necessary to carry out the purposes of this article, and to the expenses of the board in the conduct of said work and its business generally, and to repay any loans and the interest thereon, and to the creation of a sinking fund for the retirement of the principal of the bonds that the board may issue under the provisions of this article, and to the payment of the interest thereon."

R. G. S. SEC. 1167 (*Sec. 8 of Ch. 6456 as amended*):

"1167. Board to prepare lists of lands embraced in district; notice of completion; completed lists transmitted to assessors; board given power to correct assessment of 1915; laws relating to State and county taxes applicable.—At the first meeting of the said board after the passage and approval of this Act as amended in 1915, and thereafter on the second Tuesday in January of each year, the said board shall prepare for each county in which said district may lie, in whole or in part, a list of the lands lying in such county and embraced in said drainage district. Such list shall describe such lands, when it is convenient to do so, by sections, townships and ranges, and upon such list or lists shall be designated the amount assessed by this article upon each section of land or part thereof for the year in which such list or lists are made. Imme-

diately upon the preparation of such lists, the said board shall cause to be published in a newspaper published in Tallahassee and in a newspaper published in Miami, once a week for two weeks, a notice of the completion of such lists, and that the same can be examined at the office of the said board, and that on a day to be specified in said notice, being not less than fifteen days from the date of the first publication thereof, the said board shall meet at the office of said board and hear and determine all complaints in relation to the preparation of such lists by the said board, and for that purpose they may adjourn from time to time. Such lists shall be signed by the chairman of the board and shall be attested by the secretary under the seal of the said board. Such lists, when completed, shall be immediately forwarded by the board by mail to the tax assessors of the counties in which said drainage district may lie, respectively. A copy of each of such lists shall be retained by the board, and the secretary shall endorse thereon the date when the original was forwarded to the tax assessor, and shall file such copy among the records of the board.

Except as is herein specifically provided, all laws relating to State and county taxes in this State be and are hereby made applicable to the Everglades Drainage District."

R. G. S. SEC. 1168 (*Sec. 9 of Ch. 6456 as amended*):

"1168. **Method of assessment.**—It shall be the duty of the tax assessor of each of the several counties embraced in whole or in part within said district to receive such list, and he shall enter upon the tax roll of the county of which he is the tax assessor the tax or assessment shown by said list to be assessed by this article for such year against the lands described in said list; such tax or assessment shall be entered upon the tax roll in a separate column under the head of

'drainage taxes' opposite the name of the person or persons or corporation owning such land, or their or its legal representative, if the same has been returned by such owner or legal representative of such owner for State and county taxes, or in case such land has not been returned by the owner thereof, or his or their legal representative, for State and county taxes, then opposite the word 'unknown', in the manner provided by law for making up the tax roll for State and county taxes. The tax or assessment levied by this article shall constitute a lien upon the lands so assessed as of the first day of January of each year in which the entries aforesaid are made in said tax rolls, which lien shall be superior in dignity to all other liens upon said lands and equal in dignity to the lien for State and county taxes upon said land. The tax assessor shall attach to said tax roll for the year 1913 and subsequent years a special warrant to the tax collector of such county for the collection of said drainage tax, and such special warrant shall be signed by the tax assessor and be the authority of the tax collector for the collection of said taxes. Such warrant shall be substantially in the following form:

Special Warrant for Collection of Drainage Taxes,
State of Florida, to _____,

Tax Collector of the County of _____:

You are hereby commanded to collect out of the real estate against which drainage taxes are assessed and set forth in this roll, and from the persons or corporations named therein, against whose lands drainage taxes are assessed, the drainage tax set down in said roll opposite each name, corporation or parcel of land therein described, and in case such drainage tax is not paid on or before the first day of April next, you are to collect the same by levy and sale of the lands so assessed; and all sums collected for drainage taxes you are to pay to the board of commissioners of everglades drainage district.

Given under my hand and seal, this _____ day of _____, A. D. 19__.

Assessor of Taxes, _____ County.

Such warrant shall remain in full force until all the drainage taxes shown in said roll to be assessed shall be collected."

R. G. S. Sec. 1169 (Sec. 10 of Ch. 6456 as amended):

"1169. Drainage taxes when payable; collector authorized to receive drainage tax without requiring payment of other taxes; enforcement by sale; sale for delinquent taxes may be made in any year.—All drainage taxes or assessments levied by this article shall be payable on the first Monday in November of the year for which the same are assessed, and the tax collector shall collect the same on or before the first day of April following. The tax collector is authorized to receive drainage taxes and issue receipts therefor without requiring the payment of other taxes at the time of the payment of such drainage taxes. If such tax shall not be paid on any parcel or parcels of land by the person, persons or corporation whose duty it is to pay the same, on or before the first day of April in the year following that year for which such assessment is made, the tax collector shall advertise and sell such lands, by newspaper notice or by posting, in the same manner as is now provided by law for the sale of lands for the non-payment of State and county taxes, except as herein otherwise provided, but no lands which have previously been sold for the non-payment of such tax or assessment, and for which unredeemed tax certificates are outstanding, shall be again advertised and sold for the non-payment of such tax, but the tax or assessment for each subsequent year shall continue as a lien upon said land, superior in dignity to all other liens, except the lien for State and county taxes, until paid. * * *"

R. G. S. SEC. 1171 (*Sec. 12 of Ch. 6456 as amended*):

"1171. How lands sold for taxes.—On the day designated in the notice of sale, at 11 o'clock a. m., the tax collector shall commence the sale of those lands on which the drainage tax or assessment has not been paid as aforesaid, and shall continue the same from day to day until so much of each parcel thereof shall be sold as shall be sufficient to pay the drainage tax or assessment, costs and charges thereon, and in case there are no bidders, the whole tract shall be bid off by the tax collector for the trustees of the internal improvement fund, and shall be held by said trustees during the period herein allowed for the redemption of said lands in like manner and with like effect as lands sold to the State for non-payment of State and county taxes are held by the State, as now provided by law; and the tax collector must offer all such lands as assessed. The land shall be struck off to the person who will pay tax, costs and charges for the least portion of the land, and the portion thereof sold shall be taken from the southeast corner of such parcel and described in a square form, as near as may be."

Before the enactment of the amending statute, Chapter 7305, Laws of Florida of 1917, the original section 12 of Chapter 6456, Laws of Florida of 1913, was as follows:

"Sec. 12. On the day designated in the notice of sale at 11 o'clock A. M. the Tax Collector shall commence the sale of those lands on which the drainage tax or assessment has not been paid as aforesaid and shall continue the same from day to day until so much of each parcel thereof shall be sold as shall be sufficient to pay the drainage tax or assessment, costs and charges thereon, and in case there are no bidders the whole tract shall be bid off by the Tax Collector for the Board of Commissioners of Everglades Drainage District and the Tax Collector must offer all such

lands as assessed. The land shall be struck off to the person who will pay tax, costs and charges for the least portion of the land, and the portion thereof sold shall be taken from the Southeast Corner of such parcel and described in a square form as near as may be."

R. G. S. SEC. 1172 (*Sec. 13 of Ch. 6456*):

"1172. **Immediate payment by purchasers.**—The tax collector shall require immediate payment by any person to whom any parcel of such land may be struck off, and in all cases when the payment is not made within one hour he may declare the bid cancelled and sell the land again on the same day or the day following, and any person so neglecting or refusing to pay any bid made by him shall not be entitled, after such neglect, to have any bid made by him received by the tax collector during such sale."

R. G. S. SEC. 1173 (*Sec. 14 of Ch. 6456 as amended*):

"1173. **Certificate of sale; form.**—At the sale aforesaid the tax collector shall give to the purchaser a certificate of such sale, describing the lands and the amount of drainage taxes, costs and charges due thereon. The certificate shall be substantially in the following form:

STATE OF FLORIDA,

COUNTY OF _____

OFFICE OF TAX COLLECTOR.

_____, A. D. 19____

No. _____

I, _____, Tax Collector of the County of _____, in the State of Florida, do hereby certify that, pursuant to notice published as by law required, I offered for sale at public auction on this _____ day of _____,

A. D. 19____, at the court house in said County, the lands hereinafter described, in the manner prescribed by law, for the amount due and unpaid for drainage tax, costs and charges on said lands for the year 19____. That said lands were knocked off and sold to _____ for the sum of _____ dollars, the same being the amount of said unpaid drainage tax, costs and charges. And that if this certificate is not redeemed within two years from this date by payment of said amount, with interest thereon at the rate of two per centum per month from April first of the present year until April first of the following year, and eight per centum per annum thereafter, the holder thereof, or his assigns, will be entitled to receive a deed of conveyance of such lands in accordance with law, unless the holder at that time shall be the board of commissioners of Everglades Drainage District, in which case the title to such lands will then vest in said board without the issuance of a deed.

Said lands are described as follows, to wit:
_____, located
in _____ County, State of Florida.

WITNESS my hand at _____, this
_____ day of _____, A. D. 19____.

Tax Collector, _____ County."

R. G. S. SEC. 1175 (*Sec. 16 of Ch. 6456 as amended*):

"1175. Title to unredeemed lands to vest in trustees; sale of such lands after notice; disposition of proceeds.—When land is bid off by the tax collector for the trustees of the internal improvement fund, the tax certificate shall be issued by the tax collector as of the date of sale in the name of the trustees of the internal improvement fund, and if the land is not redeemed on or before two years from the date of such

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393



6-9



441

certificate, the title to the same shall immediately vest in the said trustees without the issuing of any deed as provided in other cases, and the certificates held by the said trustees shall be evidence of the title of the said trustees. The said trustees may sell and convey the said lands by deed at the best price obtainable therefor, provided such price shall not be less than the amount of all drainage taxes upon said lands which shall have become due and payable thereon pursuant to the provisions of this article. And Provided further, That no such lands shall be sold by the said trustees until four weeks' notice of the said trustees' intention to make such sale shall have been published once each week in a newspaper published in the county in which such lands lie, and if there be no newspaper published in such county, then such notice shall be published as aforesaid in a newspaper published in Jacksonville, Florida. The trustees may reject any and all bids offered for said lands.

The deed of conveyance executed by the said trustees to any such lands shall be signed by the said trustees as other deeds made by them are signed, and shall vest in the grantee of such deed the fee simple estate to such lands, free from all liens of any character except such liens as may exist for State and county taxes thereon, and such deed shall be incontestable. The proceeds of the sales of said lands shall be applied by the said trustees in the payment of drainage taxes or assessments or other obligations of said trustees."

Before the enactment of the amending statute, Chapter 7305, Laws of Florida of 1917, the original section 16 of Chapter 6456, Laws of Florida of 1913, was as follows:

"Sec. 16. When land is bid off by the Tax Collector for the said Board the tax certificate shall be issued by the Tax Collector in the name of the Board of Commissioners of Everglades Drainage District, and if the land is not redeemed on or before the first

day of December next following, the title to the same shall immediately vest in the said Board without the issuing of any deed as provided in other cases, and the certificates held by the said Board shall be evidence of the title of the said Board. The said Board may sell and convey the said lands by deed at the best price obtainable therefor, provided such price shall not be less than the amount of all drainage taxes upon said lands which shall have become due and payable pursuant to the provisions of this Act prior to such sale; and provided further that no such lands shall be sold by the said Board until four weeks' notice of the said Board's intention to make such sale shall have been published once each week in a newspaper published in the County in which such lands lie, and if there be no newspaper published in such County, then such notice shall be published as aforesaid in a newspaper published in Jacksonville, Florida. The Board may reject any and all bids offered for said lands. The deed of conveyance executed by the said Board to any such lands shall be signed by the members of said Board and attested by the Secretary with the seal of said Board and shall vest in the grantee of such deed the fee simple estate to such lands, free from all liens of any character except such liens as may exist for State and County taxes thereon, and such deed shall be incontestible. The proceeds of the sales of said lands shall be applied by the said Board in the payment of bonds and other indebtedness incurred pursuant to the provisions of this Act and in the construction, completion and maintenance of the works authorized by this Act."

R. G. S. SEC. 1176 (*Sec. 17 of Ch. 6456 as amended*):

"1176. Redemption of tax certificates; if unredeemed holder may apply for deed; tax deed; application and notice; record of redemption, cancellation of certificates; tax deed not to be set aside for certain

defects.—Any tax certificate issued under the provisions of this Article may be redeemed by the owner of said lands covered by the certificate, or any person claiming to be the owner thereof, or his agent or attorney, by paying to the clerk of the circuit court for the county wherein such lands may lie on or before two years from the date of such certificate the amount of the drainage tax due thereon for such year and all costs and charges as shown by said certificates, and interest on said amounts from the first day of April preceding such sale at the rate of two per cent per month for the first year and thereafter eight per cent per annum, together with all subsequently omitted taxes or assessments imposed under authority of this Article due and payable thereon. In the event any certificate is not redeemed as herein provided for, the holder thereof may apply to the clerk of said circuit court for a deed to said lands described in said certificate. If the certificate so redeemed is held by the said trustees, the clerk shall transmit to such trustees the amount paid on the redemption of such certificate, and said trustees shall forward to the clerk said certificate for cancellation. If such certificate is held by an individual or corporation the said clerk shall pay such sum received for the redemption of such certificate to the holder thereof, his agent or attorney, upon the delivery of such certificate to the clerk who shall cancel the same. No such tax deeds, and no such deeds given by the trustees shall be set aside or deemed to be ineffectual to convey title because of any defect of description of the premises in the tax rolls or collector's warrant or advertisement of sale or certificate of sale or tax deed or other document, notice or paper prescribed herein, provided the description given is sufficient to describe the premises with reasonable certainty, * * *. If any tax deed or deeds by the trustees be invalid for either of the two reasons last given, the board of commissioners of Everglades Drainage District or the trustees as the case may be

shall, on application therefor, refund to the purchaser, or his assigns, of the lands so sold, or of lands so sold to the trustees and by them sold to him, the amount of drainage taxes received in connection therewith, with interest at six per cent per annum. All tax deeds and deeds issued by the trustees pursuant to this Article shall be and are hereby declared *prima facie* evidence of the regularity of the proceedings from the date of the first meeting of the board of commissioners of Everglades Drainage District at which is prepared for each county a list of the lands lying therein and embraced in said drainage district, to the date of the deed or deeds inclusive, and shall be so received in evidence in any and all courts of this State without regard to date of execution, and no defense shall be permitted thereto except the two defenses last hereinabove mentioned and the defense that no notice of application for the tax deed or of the expiration of the period of redemption was at any time either posted or published or mailed or delivered to the owner or person last paying taxes thereon."

Before the enactment of the amending statute, Chapter 7305, Laws of Florida of 1917, the original section 17 of Chapter 6456, Laws of Florida of 1913, was as follows:

"SEC. 17. Any tax certificate issued under the provisions of this Act may be redeemed by the owner of said lands covered by the certificate, or any person claiming to be the owner thereof, or his agent or attorney, by paying to the Clerk of the Circuit Court for the County wherein such lands may lie on or before the 1st day of December following the date of such certificate the amount of the drainage tax due thereon for such year, and all costs and charges as shown by said certificate, and interest on said amounts from the first day of April, preceding such sale, at the rate of two per cent per month. In the event any certificate is not redeemed as herein provided on or before the

first day of December following the date of such certificate, the holder thereof may apply to the Clerk of said Circuit Court for a deed to said lands described in said certificate. * * * If the certificate so redeemed is held by the said Board, the Clerk shall transmit to such Board the amount paid on the redemption of such certificate, and said Board shall forward to the Clerk said certificate for cancellation, if such certificate is held by an individual or corporation the said Clerk shall pay such sum received for the redemption of such certificate to the holder thereof, his agent or attorney, upon the delivery of such certificate to the Clerk, who shall cancel the same."

R. G. S. SEC. 1178 (*Sec. 19 of Ch. 6456 as amended*):

"1178. Board authorized to borrow money on permanent loans; authorized to issue bonds to certain amount under certain limitations.—The board of commissioners of Everglades Drainage District is hereby authorized and empowered to borrow money on permanent loans and incur obligations from time to time on such terms and at such rates of interest as it may deem proper, not exceeding six per cent, for the purpose of raising funds to continue and prosecute to final completion the canals, drains, dikes, dams, locks and reservoirs now in process of construction in the territory embraced in said district, and to build and construct such other canals, drains, dikes, dams, locks, reservoirs and other works as the said board may deem advantageous to the territory embraced in said drainage district, and to pay the expenses incident to such work and all expenses necessary or needful to be incurred in carrying out the purpose of this Article. And the better to enable said board to borrow the money necessary to carry out the purposes aforesaid, the said board is hereby authorized and empowered to issue in the corporate name of said board negotiable coupon bonds of said Everglades Drainage District: Pro-

vided, however, That the amount of bonds issued and outstanding under this Act shall not at any time exceed six million dollars, that is to say, two million five hundred thousand dollars over and above the three million, five hundred thousand dollars as provided for and authorized under the provisions of Chapter 6957 of the Acts of 1915; and provided further, that the amount of bonds authorized and issued by said board in any fiscal year, such fiseal year being deemed to end on the 31st day of December in each year including 1915, shall not exceed the sum of one million five hundred thousand dollars; but nothing herein contained shall be deemed a limitation of the right of the legislature to authorize additional bonds of said board payable from drainage taxes within said district, provided any such additional authority shall be accompanied by the levy and imposition of additional taxes or assessments sufficient to meet the payment of the bonds authorized and interest thereon as the same shall become due; such payment to be provided for by a sinking fund as herein required, and such additional bonds shall constitute an obligation of equal dignity with the bonds herein authorized and equally with the bonds herein authorized may be entitled to payment from all drainage taxes then or thereafter imposed upon the lands within said district without preference to any bonds or series of bonds over any other bonds or series of bonds."

Before the enactment of the amending statute, Chapter 6957, Laws of Florida of 1915, the original section 19 of Chapter 6456, Laws of Florida of 1913, was as follows:

"SEC. 19. The Board of Commissioners of Everglades Drainage District is hereby authorized and empowered to borrow money on permanent loans and incur obligations from time to time on such terms and at such rates of interest as it may deem proper, not

exceeding six per cent, for the purpose of raising funds to continue and prosecute to final completion the canals, drains, dikes, dams, locks and reservoirs now in process of construction in the territory embraced in said district, and to build and construct such other canals, drains, dikes, dams, locks, reservoirs and other works as the said Board may deem advantageous to the territory embraced in said drainage district, and to pay the expenses incident to such work and all expenses necessary or needful to be incurred in carrying out the purpose of this Act. And the better to enable said Board to borrow the money necessary to carry out the purposes aforesaid, the said Board is hereby authorized and empowered to issue in the corporate name of said Board negotiable coupon bonds of said Everglades Drainage District, provided however that the total amount of bonds so issued and outstanding shall not at any time exceed six million dollars principal, and provided further that the amount issued by said Board in any fiscal year (such fiscal year being deemed to end on the 31st day of December in each year, including the year 1913) shall not exceed the sum of one million five hundred thousand dollars."

R. G. S. SEC. 1179 (*Sec. 20 of Ch. 6456 as amended*):

"1179. Denomination of bonds; redemption.—The bonds to be issued by authority of this Article shall be in denominations of one thousand dollars, or such smaller denominations, but not less than one hundred dollars, as the said board may determine. Said bonds shall bear interest at a rate to be fixed by said board not exceeding six per cent per annum, which interest shall be payable semi-annually in gold coin or its equivalent in lawful money of the United States, at the office of the State Treasurer of the State of Florida, or if the said board shall deem it expedient, at the office of said State Treasurer and at such other place as shall be designated by the said board; at the option

of the holder, the place of payment being specified in the said bonds and in the coupons attached thereto. The principal of said bonds shall be made payable to bearer in gold coin or its equivalent in lawful money of the United States at such periods of time or dates not exceeding thirty years from the date of issuing the same, as the said board shall determine, and it may in the discretion of said board be provided that at any time after such date as shall be fixed by the said board, the said bonds may be redeemed at the option of the said board or their successors in office, such redemption to be made in the manner specified in this Article. * * *

R. G. S. SEC. 1180 (*Sec. 21 of Ch. 6456*):

"1180. How bonds executed; certificate of Attorney-General; custodian of bonds.—The bonds authorized by this Article to be issued shall be signed by each member of the said board and attested by the secretary under the seal of the said board. Said bonds shall be in such form as shall be prescribed by the said board, shall recite that they are issued under the authority of this Article which shall be referred to by number of Chapter and date of approval, and shall pledge the faith and credit of the board of commissioners of the Everglades Drainage District for the prompt payment of the principal and interest thereof. * * * When the said board has caused any bonds issued under this Article to be prepared, signed and sealed in the manner prescribed herein, the said bonds shall be submitted to the Attorney-General of the State of Florida, whereupon it shall be the duty of the Attorney-General to carefully examine the said bonds in connection with the facts and constitution and the provisions of this statute, and if as a result of such examination, the Attorney-General shall find that such bonds are issued in conformity with the constitution and in conformity with this statute and that they are

binding and valid obligations upon the said board and the said Everglades Drainage District, he shall officially so certify on each of the said bonds as follows:

'The within bond examined and certified to be regularly issued and a valid obligation of the board of commissioners of Everglades Drainage District.'

Which certificate shall be signed by the Attorney-General and shall be admitted and received in evidence as proof of the validity of such bonds with the coupons thereto attached, and no defense shall be offered against any bonds so certified in any action or proceeding except forgery. * * *

R. G. S. SEC. 1182 (*Sec. 23 of Ch. 6456*):

"1182. Authority for issuance and sale of bonds; act contract between board and holder of bonds; suit to enforce payment.—This Article shall without reference to any other act of the legislature of Florida be full authority for the issuance and sale of the bonds in this Article authorized, which bonds shall have all the qualities of negotiable paper under the law merchant, and shall not be invalid for any irregularity or defect in the proceedings for the issue and sale thereof, and shall be incontestible in the hands of *bona fide* purchasers or holders thereof for value. No proceedings in respect to the issuance of any such bonds shall be necessary except such as are required by this Article: The provisions of this Article shall constitute an irrepealable contract between the said board and said Everglades Drainage District and the holders of any bonds and the coupons thereof, issued pursuant to the provisions hereof. Any holder of any of said bonds or coupons may either at law or in equity by suit, action or mandamus enforce and compel the performance of the duties required by this Article of any of the officers or persons mentioned in this Article in relation to the said bonds, or to the collection, enforcement and application of the taxes for the payment

thereof: Provided, however, That no obligation authorized by this Article shall be construed as an obligation of this State, but only as the obligation of the Drainage District herein created."

R. G. S. SEC. 1183 (*Sec. 24 of Ch. 6456*):

"1183. Payment of interest on bonds; sinking fund created for payment of bonds, etc.—It shall be the duty of the State Treasurer or his successor in office, as custodian of the funds belonging to the said board of commissioners and to the said Drainage District, out of the proceeds of the taxes levied and imposed by this Article and out of any other moneys in his possession belonging to the said board or to the said Drainage District, which moneys so far as necessary are hereby set apart and appropriated for the purpose, to apply said moneys and to pay the interest upon the said bonds as the same shall fall due and at the maturity of the said bonds out of the said moneys to pay the principal thereof, and there shall be and there is hereby created a sinking fund for the payment of the principal of the said bonds, and the said board shall set apart and pay into such sinking fund annually out of the taxes levied and imposed by this Article, and the other revenue and funds of the said district, at least two per cent of the amount of bonds outstanding. The said sinking fund for the payment of the principal of said bonds shall not be appropriated to any other purpose than that herein specified."

R. G. S. SEC. 1184 (*Sec. 25 of Ch. 6456*):

"1184. Investment of sinking fund; sale of securities to protect sinking fund, etc.; custodian of funds; disbursement of funds; depositories, c.— * * * The State Treasurer shall be the custodian of all funds belonging to the said board and to the said Drainage District, and such funds shall be disbursed only upon the order of the Comptroller countersigned by the

Governor, but the Comptroller shall draw no such order except upon a voucher, or vouchers, approved by the said board. * * *

Chapter 8412, Laws of Florida of 1921.

In 1921 the Florida legislature provided funds for maintenance and other general purposes of Everglades Drainage District, by Chapter 8412, Laws of Florida of 1921, in which, among other things, it is enacted that:

"SECTION 1. That there is hereby levied and assessed on all real, personal and mixed property in the Everglades Drainage District of Florida, including the lands held by the Trustees of the Internal Improvement Fund for the State of Florida, annually, beginning with and including the year 1921 a tax of one mill on each one dollar of valuation, and the said tax to be known as a maintenance tax and shall be used for maintenance, repairs, upkeep, and any other general or necessary purpose of the District."

Chapters 10,926 and 10,027, Laws of Florida of 1925.

In 1925 the legislature of the State of Florida enacted Chapters 10026 and 10027, Laws of Florida of 1925, amending certain of the sections of the Revised General Statutes of Florida of 1920 as amended in 1921 and 1923. The amendments enacted in 1921 and 1923 authorized additional bonds of the District to be issued and levied increased rates and amounts of taxes for payment of the additional bonds authorized to be issued.

Chapter 10027 amended R. G. S. Sec. 1179 relating to the refunding of outstanding bonds of Everglades Drain-

age District. Chapter 10026 amended R. G. S. Sec. 1160 relating to the boundaries of Everglades Drainage District; and also amended R. G. S. Sec. 1178, as amended in 1921 and 1923, so as to authorize the Board of Commissioners of the District to issue additional bonds of the District in the amount of \$3,000,000 over and above the total amount theretofore authorized to be issued; and Chapter 10026 also amended R. G. S. Sec. 1164 as amended in 1921 and 1923, by providing increased rates of taxes upon all the lands in Everglades Drainage District, it being enacted by Section 2 of said Chapter 10026:

"SEC. 2. That Section 1164 of the Revised General Statutes of the State of Florida, as amended by Section 1 of Chapter 8413, Laws of Florida, Acts of 1921, as amended by Section 1 of Chapter 9119, Laws of Florida Acts of 1923, be and same is hereby amended to read as follows:

1164. Annual assessment of taxes levied: Amount of acreage tax: Lands held by Trustees subject to tax: For the purpose of constructing, completing and maintaining the works of drainage and reclamation hereby authorized for the benefit and protection of the lands in said district, annual assessments of taxes shall be and are hereby levied and imposed upon all lands within said district, as follows, to wit: all being in Townships south of the Tallahassee parallel and in the ranges east of the Tallahassee meridian, to-wit:

ZONE 1.

That upon the following described lands in the said district, all being in Township South, Ranges East, Tallahassee Meridian, and Parallel as enumerated as follows, to wit:

In Township 41, Range 32, all Sections; 34 and 35;
also

A tax of \$1.25 per acre except on platted town lots of ONE acre or less, and \$1.25 on each such town lot is hereby levied for each of the years 1925 and 1926; and thereafter a tax of \$1.50 per acre except on platted town lots of ONE acre or less, and \$1.50 on each such town lot annually is hereby levied upon said lands.
 • • •

The unfitted parts of this section continue at length the description of all the lands in the District subject to taxes, and the levy upon such lands of acreage taxes at the specified rates for each year, in manner similar to that appearing in the parts of the section herein set out.

Chapter 13,633, Laws of Florida of 1929.

In 1929 the legislature of the State of Florida passed the first of the statutes which appellants contend impair the obligation of their bond contract, being Chapter 13,633, Laws of Florida of 1929, in which among other things it is enacted that:

“SECTION 6. For the purpose of constructing, completing and maintaining the works of Drainage and Reclamation hereby authorized, and for the benefit and protection of the lands in said District, and for carrying on the business of said District generally, and in lieu and instead of all other acreage taxes or assessments now authorized to be levied by said Board, annual assessment of taxes shall be and hereby are levied and imposed upon all lands within said district for the year 1929 and subsequent years as follows, to-wit:

Upon all lands described in Zone No. 1 as the same is defined by Chapter 12017, Laws of Florida, Acts of 1927, a tax of \$1.30 per acre for each of the years

1929 and 1930 and a tax of \$1.45 per acre for each year thereafter.

.

Provided, however, that there shall be deducted from the taxes hereinabove provided for as to each acre of land within said District in each year, an amount equal to the sum of money levied for such year upon such land as an acreage tax under the provisions of An Act of the Legislature of Florida, creating Okeechobee Flood Control District, and such deduction shall be made by the Board at the time Everglades Drainage District taxes are certified to the several Tax Assessors in each year.

The Board shall, as soon as practicable, after the passage and approval of this Act, certify to the Tax Assessor of each County containing lands within said District, the acreage taxes levied upon the said lands in accordance with the foregoing provisions for the year 1929 and each Tax Assessor shall extend upon the tax roll for the year 1929 the amount of taxes so certified, in lieu of other acreage taxes certified by said Board to the said Tax Assessors for the year 1929.

.

All of the provisions of existing laws with reference to acreage taxes authorized to be levied by the Board of Commissioners of Everglades Drainage District under the provisions of Chapter 12017, Laws of Florida, Acts of 1927, are hereby made applicable to the Acreage taxes levied under the provisions of this Act. Provided, however, that the said Board shall have the right at any time to reduce the taxes hereinabove levied in each of said zones and lands proportionately to the extent of not more than twenty-five (25%) per cent of the foregoing levies on such zones and lands, and from time to time to re-adjust such levies on each of said zones and lands proportionately, not to exceed the amount per acre hereinabove levied in any of such areas, after a hearing of objec-

tions to such proposed reduction or re-adjustment at a time and place fixed in a notice to be published once a week for three consecutive weeks in a newspaper published in each county lying wholly or partly in said district.

SECTION 36. All laws or parts of laws in conflict herewith are hereby repealed."

Chapter 14,717, Laws of Florida of 1931.

In 1931 the legislature of the State of Florida passed the second of the statutes which appellants contend impair the obligation of their bond contract, being Chapter 14,717, Laws of Florida of 1931, in which among other things it is enacted that:

"SECTION 6. The taxes and special assessments in this Act levied and authorized to be levied shall be used solely and exclusively for the several uses, purposes and objects specified in this statute with respect to the several such taxes and special assessments.

SECTION 7. That for the purpose of enabling the Board to pay the principal and interest of all obligations of Everglades Drainage District heretofore incurred and now outstanding, there are hereby levied and imposed within Everglades Drainage District the following special taxes or assessments, which shall be known and designated as the 'Debt Service Tax':

Upon all of the lands lying and being situate within Zone One, hereinabove described, a tax of Forty-nine Cents (\$0.49) per acre per annum for the year 1931, and for each year thereafter.

ADMINISTRATION TAX.

SECTION 8. That for the purpose of paying the cost of administering the affairs of the said District

generally there is hereby levied and imposed upon lands within Everglades Drainage District a special tax or assessment as follows:

Upon all of the lands lying and being situate within Zone One, hereinabove prescribed, a tax of Twenty-one Cents (\$0.21) per acre per annum for the year 1931, and for each year thereafter.

FINANCIAL ADMINISTRATION.

SECTION 43. There are hereby established for Everglades Drainage District the following separate and distinct Funds:

SEPARATE FUNDS ESTABLISHED.

(A) Administration Fund, into which shall be paid the proceeds of the administration tax levied by this Act.

(B) Debt Service Fund, into which shall be paid the proceeds of the debt service tax levied by this Act, and also the proceeds of the conversion into money of all tax sale certificates and/or lands which shall be received by Board of Commissioners of Everglades Drainage District from Trustees of Internal Improvement Fund of Florida under the provisions of this Act, and all moneys which shall be received by the Board after November 1, 1931, from redemption and/or sale of lands sold for the non-payment of taxes levied for the year 1930.

.

PLEDGE OF ADMINISTRATION FUNDS.

(D) The Board shall have the power to borrow in any year for the account of the Administration Fund not more than sixty per centum (60%) of the total administration tax levied for such year and to issue the promissory note, or other negotiable evidence of debt,

of Everglades Drainage District, bearing interest at the rate of not more than eight per centum (8%) per annum, evidencing such loan, and to pledge the avails of the administration tax for such year for the repayment of such loan. The proceeds of any such loan shall be paid into the Administration Fund.

USE OF MONEYS BELONGING TO SEPARATE FUNDS.

SECTION 44. The moneys which shall be placed in the separate Funds established and defined by the preceding section shall be used and expended only for the following purposes, severally:

(A) Administration Fund, for the purpose of administering the affairs of Everglades Drainage District generally and for the payment of any other items of expense specifically authorized to be paid from such Fund by the provisions of this Act.

(B) Debt Service Fund, for the sole purpose of paying the principal and interest of obligations now owing by Everglades Drainage District, including bonds and notes and any bonds or refunding bonds which may be issued under the provisions of this Act for the purpose of funding or refunding any existing obligations. The fact that moneys in such Debt Service Fund are made applicable to the payment of the principal and interest of all obligations now owing by Everglades Drainage District shall not operate to destroy any priority as to payment which may now exist with respect to the several obligations or classes of obligations now owing by said District.

SALE OF LANDS UPON WHICH TAXES ARE NOT PAID.

SECTION 56. (A) If the drainage taxes shall not be paid on any parcel of land on or before the first day of April in the year following that year for which the assessment was made, the Tax Collector shall advertise and sell such lands, as herein provided.

.

CONDUCT OF SALE.

(C) On the day designated in the notice of sale, and at the time that the lands described therein are offered for sale for State and County Taxes unpaid thereon, the Tax Collector shall offer for sale, separately, all lands delinquent for the payment of drainage taxes, together with the costs and charges thereon, and such lands shall be struck off to the person who will pay the drainage taxes, costs and charges and will demand the lowest rate of interest for the first year not in excess of the maximum rate allowed by law. If there shall be no bidder for any tract of land offered for sale for drainage taxes the whole tract shall be bid off by the Tax Collector for Board of Commissioners of Everglades Drainage District. The said sale shall continue from day to day until each parcel of land delinquent for the payment of drainage taxes shall have been sold.

TRANSFER OF TAX SALE CERTIFICATES
TO BOARD.

SECTION 65. (A) It is hereby recited and declared that all tax sale certificates in the hands of the Trustees of Internal Improvement Fund of the State of Florida, whether evidencing a lien upon, or title to, lands within Everglades Drainage District, which said tax sale certificates were issued to the said Trustees of Internal Improvement Fund in pursuance of the sale of lands for the non-payment of taxes or assessments heretofore levied and imposed by, or upon behalf of, Everglades Drainage District are held by such Trustees of Internal Improvement Fund in trust for Board of Commissioners of Everglades Drainage District, and that the beneficial interest in, and title to, said tax sale certificates are vested in Board of Commissioners of Everglades Drainage District, subject to the right of Trustees of Internal Improvement

Fund, to be repaid by Everglades Drainage District, any sums of money which may have been advanced by Trustees of Internal Improvement Fund for the account of Everglades Drainage District and which shall be found to be owing by Everglades Drainage District to such Trustees.

(B) Within ninety (90) days after this Act goes into effect, or as soon thereafter as practicable, the said Trustees of Internal Improvement Fund shall assign, transfer and deliver unto Board of Commissioners of Everglades Drainage District all such tax sale certificates and the said Board of Commissioners of Everglades Drainage District shall thereupon become seized and possessed of every right, title and interest now vested in said Trustees of Internal Improvement Fund under and by virtue of said tax sale certificates. Whatever sum of money may be found to be owing by Everglades Drainage District to Trustees of Internal Improvement Fund shall be adjusted at the time of the transfer of such certificates in such manner as may be agreed upon between the Board and such Trustees, and any such indebtedness may be paid, in whole or in part, by the relinquishment by the Board of all of its rights in certain certificates, to be agreed upon between the Board and such Trustees. Any balance which may be owing to such Trustees after the Board shall have been given credit for any certificates retained by the Trustees as aforesaid shall be evidenced by certificates of indebtedness to be issued by the Board to such Trustees. The said certificates of indebtedness shall be signed in the name of the Board by its Chairman or Vice-chairman, attested by its Secretary, under its seal, shall be in denominations of not less than One Thousand Dollars (\$1,000), and shall bear interest at the rate of two per centum (2%) per annum from the date of their issuance until paid. The said certificates of indebtedness, including the principal and interest thereof, shall be receivable by Board of Commissioners of Ever-

glades Drainage District from the Trustees of Internal Improvement Fund, or from any person who shall hereafter purchase lands within Everglades Drainage District from such Trustees, in payment of Everglades Drainage District taxes, as the same may become due and payable, upon lands which are now, or may hereafter be, held by the said Trustees, and the indebtedness evidenced by such certificates shall be liquidated as the said certificates are presented by the Trustees, or their grantees, as aforesaid, to the Board in payment of drainage taxes upon such lands. Board of Commissioners of Everglades Drainage District shall not be required to pay the said certificates of indebtedness in any other manner except by accepting the same in payment of taxes upon lands which are now, or may hereafter be, owned in Everglades Drainage District by Trustees of Internal Improvement Fund, but such certificates may be used for the purpose of paying taxes upon such land either by the said Trustees or by any person or persons who may hereafter purchase any of said lands from such Trustees.

(e) Upon the expiration of the time for redemption with respect to certificates which shall be retained by Trustees of Internal Improvement Fund no further right to redeem shall exist and the said Trustees shall be deemed to have a fee simple title to all lands covered by unredeemed certificates in their hands, and such lands shall constitute a part of the Internal Improvement Fund of the State of Florida and shall be held and disposed of by such Trustees in like manner as is provided by law with respect to other lands constituting a part of such Internal Improvement Fund.

SALE OF LANDS BY BOARD.

SECTION 67. Lands to which the Board of Commissioners of Everglades Drainage District shall acquire title under the provisions of this Act, or under the pro-

visions of any other law, may be sold by the said Board in the manner following:

LANDS COVERED BY CERTIFICATES NOW EXISTING.

(A) Any lands covered by tax sale certificates which shall be transferred to Board of Commissioners of Everglades Drainage District by Trustees of Internal Improvement Fund may be sold by the Board at the best price obtainable therefor, and the Board, in its discretion, may accept in payment of all, or a part, of the purchase price therefor bonds and/or matured interest coupons of Everglades Drainage District at par.

LANDS COVERED BY TAX SALES MADE HEREAFTER.

(B) Any lands to which the Board may acquire title in the future by virtue of tax sales hereafter to be made may be sold by the Board at any time for the best price obtainable therefor, but not less than the amount of all unpaid District taxes thereon, plus interest, penalties, costs and charges.

REDEMPTION OF LANDS FROM TAX SALES—

PAYMENT WITH BONDS.

SECTION 71. In the redemption of land from tax certificates which shall be transferred to the Board under the provisions of this Act, and in the redemption of lands which shall be sold to the Board for the non-payment of the taxes assessed for the year 1930, the person entitled to redeem shall have the right to pay the amount required to redeem such land with bonds of Everglades Drainage District now outstanding, and/or matured interest coupons attached to such bonds, and such bonds and/or interest coupons shall be accepted, in lieu of money, at the par value thereof. The fees for redemption shall be paid in cash.

SECTION 104. All laws or parts of laws in conflict herewith are hereby repealed."

Chapter 17,902, Laws of Florida of 1937.

In 1937 the legislature of the State of Florida passed the third of the statutes which appellants contend impair the obligation of their bond contract, being Chapter 17,902, Laws of Florida of 1937, in which among other things it is enacted that:

"SECTION 3. That Section 7 of said Act* be and the same is hereby amended so as to read as follows:

SECTION 7. That for the purpose of enabling the Board to pay the principal and interest of all obligations of Everglades Drainage District heretofore incurred and now outstanding and any refunding bonds hereafter issued, there are hereby levied and imposed within Everglades Drainage District the following special taxes or assessments, which shall be known and designated as the 'Debt Service Tax':

Upon all of the lands lying and being situate within Zone One, hereinabove described, a tax of Ninety Cents (\$.90) per acre per annum for the year 1937, and for each year thereafter.

* * * * *

SECTION 4. That Section 8 of said Act be and the same is hereby amended so as to read as follows:

SECTION 8. That for the purpose of paying the cost of administering the affairs of the said District generally, there is hereby levied and imposed upon lands within Everglades Drainage District a special tax or assessment as follows:

Upon all of the lands lying and being situate within Zone One, hereinabove described, a tax of Ten Cents (\$.10) per acre per annum for the year 1937, and for each year thereafter.

* * * * *

*[Chapter 14,717, Laws of Florida of 1931.]

Such other funds as may be received by the Board, and not by this Act specifically appropriated or allotted to other funds, shall become a part of the Administration Fund.

SECTION 9. In connection with the effectuation and consummation of any compromise, refinancing or refunding of the indebtedness of said Everglades Drainage District, the Board of Commissioners is hereby authorized and empowered to compromise, adjust, or cancel, without payment, any and all Everglades Drainage District taxes and liens now outstanding against the lands within said District levied by the laws of the State of Florida for the years 1936 and prior years, and held and owned by the Board of Commissioners of Everglades Drainage District, by proper resolution of said Board setting forth the manner and terms upon which said compromise, adjustment, or cancellation has been or will be made, and providing for the means and manner of clearing the records as to such liens under the provisions of this Act.

The Board of Commissioners and the Trustees of the Internal Improvement Fund of Florida are hereby given authority to enter into such agreements and make such settlements between them as, in the discretion of said two Boards, may seem just and expedient in the consummation of any such debt refunding or adjustment plans negotiated by said Board of Commissioners.

SECTION 10. That in the event any of the lands described in the above zones shall be or become the property of the United States Government, or under the control, management, and maintenance of the United States Government, the Board of Commissioners is hereby authorized and empowered by resolution of the Board to cancel any and all liens and assessments against such property and to exempt said lands from future Everglades Drainage District taxes

and assessments, so long as said lands may remain the property or under the control of the United States Government.

SECTION 11. That the Board of Commissioners shall have the power and authority, from time to time, to provide by resolution that the time within which tax sale certificates or other tax liens representing taxes levied for the year 1936 or any prior year, held by such Board, may be redeemed, shall be extended for a total period not to exceed two years from the date that this Act becomes a law, and such redemption may be made within the period of time fixed by such Board by the payment of the principal amount of taxes evidenced by any such tax sale certificate or secured by any such tax lien plus interest thereon, at the rate of eight per centum (8%) per annum, from the date upon which such tax sale certificate was issued or such tax lien became evidenced.

SECTION 12. That in the payment or redemption of any tax sale certificate or tax lien representing taxes levied for the year 1936, or any prior year, held by the Board, bonds and/or matured interest coupons or other obligations of such drainage district shall be receivable at par, and in lieu of money in payment of the sum of money required to be paid in effecting such redemption, except that so much or any part of such sum of money required to be paid as is applicable under the law primarily or solely to maintenance of the works and improvements of the district or to the administration of its affairs shall be payable solely in cash. The fees of public officers chargeable by law in connection with any such redemption shall be paid in cash.

SECTION 17. All laws or parts of laws in conflict herewith are hereby repealed."

FILE COPY

Office - Supreme Court, U. S.

FILED

MAR 28 1939

CHARLES ELMORE GOSPLEY
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM 1938

No. 554

H. C. RORICK, JOSEPH R. GRUNDY and
J. R. EASTON,

Appellants,

v.

BOARD OF COMMISSIONERS of Everglades
Drainage District, etc., *et al.*,

Appellees.

APPEAL FROM DECREE OF SPECIALLY CONSTITUTED THREE
JUDGE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF FLORIDA.

REPLY BRIEF FOR APPELLANTS

WILLIAM ROBERTS,
W. H. WATSON,
SAMUEL PASCO,

Counsel for Appellants.



SUBJECT INDEX

	PAGE
Argument	1
I. Equity has jurisdiction of this suit, since the plaintiff bondholders as beneficiaries of the trust created by the appropriation of the taxes for the payment of the bonds seek, among other things to restrain the custodian of the taxes from executing the state statute by diverting these trust funds to other purposes, and seek to enjoin the Board of Commissioners and the Trustees from participating in such diversion	1
II. The appellants have a direct right of appeal to the Supreme Court of the United States under Sec. 266 of the Judicial Code	7
1. The Board of Commissioners as defendants are state officers within section 266 of the Judicial Code, and the state statutes attacked are of general application	7
2. The State Treasurer is a state officer within the meaning of Section 266	12
3. The Trustees are state officers within the meaning of Section 266 of the Judicial Code	12
III. By the statutes under which the bonds are issued the Trustees are under obligation to pay taxes on the lands in the District bid off to them at tax sales	14
(a) The contention of the Trustees and the Board that the statute should not be interpreted to impose an obligation upon the Trustees to pay taxes on bid off lands is unsound	14

(b) The statute, when construed to impose upon the Trustees the obligation to pay the acreage taxes on the bid off lands, does not violate the Florida Constitution because of defect in the title to the statute	17
(c) This court should not follow the decision of the Supreme Court of Florida in <i>State ex rel., Board of Commissioners v. Sholtz</i> , 112 Fla. 756...	19
(d) An obligation of the Trustees to pay the taxes on the lands bid off for them at tax sales is not a violation of the State Constitution prohibiting the issue of bonds by the State or the lending of its credit	23
(e) A suit against the Trustees is not a suit against the State	25
Conclusion	27

TABLE OF CONSTITUTIONS AND STATUTES CITED

Constitution of the United States:

Amendment XI	25-26
--------------------	-------

Constitution of the State of Florida:

Art. 3, Sec. 16	17, 19
Art. 13, Sec. 11 (Const. 1838, 1861, 1865)	24
Art. 9, Secs. 6, 10	24
28 U. S. C. A. 777, Revised Statutes Sec. 954	4
28 U. S. C. A. 380, Judicial Code Sec. 266	7, 12
Chapter 610, Laws of Florida, 1855	9, 23-24, 26, 27
Chapter 5377, Laws of Florida, 1905	10
Chapter 5709, Laws of Florida, 1907	10

	PAGE
Chapter 6456, Laws of Florida, 1913	9, 14-16, 18, 23
Chapter 7305, Laws of Florida, 1917	16-18, 23
Chapter 7838, Laws of Florida, 1919	17
Chapter 9119, Laws of Florida, 1923	13
Chapter 10026, Laws of Florida, 1925	13, 14
Chapter 12016, Laws of Florida, 1927	19, 24-25
Chapter 13633, Laws of Florida, 1929	4, 5, 7
Chapter 14717, Laws of Florida, 1931	5, 7, 11, 12, 28, 29
Chapter 17902, Laws of Florida, 1937	5, 7, 11
Revised General Statutes of Florida, 1920:	
R. G. S. Sec. 1055	27
R. G. S. Sec. 1170	10
R. G. S. Sec. 1171	17
R. G. S. Sec. 1182	26

TABLE OF CASES CITED

<i>Adams v. Mercantile Trust Co.</i> , 66 Fed. 621 (C. C. A. 5)	31
<i>Arundel Corporation v. Griffin</i> , 89 Fla. 128	9
<i>Astiazaran v. Santa Rita etc. Co.</i> , 148 U. S. 80	30
<i>Carlton v. State</i> , 63 Fla. 1	17, 18
<i>Christopher v. Mungen</i> , 61 Fla. 513	17
<i>City of Jacksonville v. Bankers Life Co.</i> , 90 Fed. 2d 141 (C. C. A. 7)	2
<i>Clews v. Jamieson</i> , 182 U. S. 461	2
<i>Detroit R. Co. v. Interst. Com. Commission</i> , 277 Fed. 537	31
<i>Everglades Drainage Dist. v. Florida Ranch & Dairy Corp.</i> , 74 Fed. 2d 914 (C. C. A. 5)	13
<i>Ex Parte Collins</i> , 277 U. S. 565	7
<i>Ex Parte Young</i> , 209 U. S. 123	30

	PAGE
Henrietta Mills v. Rutherford County, 281 U. S. 121	3
Hidalgo County Road Dist. v. Morey, 74 Fed. 2d 101 (C. C. A. 5)	7
In re Smith Estate, 199 Pac. (Mont.) 696	31
Jones v. Securities & Exchange Commission, 298 U. S. 1	7
Lainhart v. Catts, 73 Fla. 735	18, 19
Lord v. Veazie, 8 How. 251	30
Martin v. Dade Muck Land Co., 95 Fla. 530	9, 19-25
McConville v. Ft. Pierce Bank & Trust Co., 101 Fla. 727	18
McNee v. Wall, 4 Fed. Supp. 496 rev'd 296 U. S. 547	14
Mercantile Trust Co. v. Roanoke R. Co., 109 Fed. 3	31
Mexican C. R. Co. v. Duthie, 189 U. S. 76	4
New Orleans v. New York SS Co., 20 Wall. 387	31
Norton v. Larney, 266 U. S. 511	4, 5
Olmstead v. Superior, 155 Fed. 172	2
Prout v. Starr, 188 U. S. 537	30
Rickey Land & Cattle Co. v. Miller, 218 U. S. 258	30
Rorick v. Board of Commissioners, 57 Fed. 2d 1048	5, 29
Rosenbaum v. Bauer, 120 U. S. 450	3
Sharon v. Sharon, 23 Pac. (Cal.) 1100	31
Smith v. McCullough, 270 U. S. 456	4
Southern Pac. R. R. Co. v. United States, 168 U. S. 1	31
State ex rel. Board of Commissioners v. Sholtz, 112 Fla. 756	19-23
State ex rel. Sherrill v. Milam, 113 Fla. 491, 559, 587	4
Thompson v. Emmett Irrigation District, 227 Fed. 2d 56 (C. C. A. 9)	2
Trustees v. Bailey, 10 Fla. 112	23, 24, 26
Trustees v. Gleason, 15 Fla. 384	26

INDEX

v

PAGE

Trustees v. Root, 59 Fla. 648 -----	26
Trustees v. Root, 63 Fla. 666 -----	25
Vickrey v. Sioux City, 104 Fed. 64 -----	2
Wade v. Clower, 114 So. (Fla.) 548 -----	31, 32
Ward v. Alsup, 46 S. W. (Tenn.) 574 -----	30
Wilson v. Mitchell, 43 Fla. 107 -----	26



IN THE
Supreme Court of the United States

OCTOBER TERM 1938

No. 554

H. C. RORICK, JOSEPH R. GRUNDY and
J. R. EASTON,

Appellants,

v.

BOARD OF COMMISSIONERS of Everglades
Drainage District, etc., *et al.*,

Appellees.

APPEAL FROM DECREE OF SPECIALLY CONSTITUTED THREE
JUDGE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF FLORIDA.

REPLY BRIEF FOR APPELLANTS.

I. Equity has jurisdiction of this suit, since the plaintiff bondholders as beneficiaries of the trust created by the appropriation of the taxes for the payment of the bonds seek, among other things, to restrain the custodian of the taxes from executing the state statute by diverting these trust funds to other purposes, and seek to enjoin the Board of Commissioners and the Trustees from participating in such diversion.

The Board contends (Brief, pp. 10, 13) that this is not properly a suit in equity as there is an adequate remedy at law.

In the bill and each of the supplemental bills an injunction is sought against the State Treasurer as the custodian of the acreage taxes to prevent, through his execution of the subsequent statutes, the diversion of the taxes to purposes other than the payment of the bonds. The taxes are trust property in the hands of the custodian through the appropriation of the taxes in his hands for the payment of the bonds, the custodian is the trustee of the funds and the bondholders are the beneficiaries, as is clearly settled by the authorities cited by appellants at page 54 of their brief.

It is fundamental that equity has jurisdiction of trusts and that a beneficiary may enjoin the trustee from the diversion of the trust property to an improper purpose. *Clews v. Jamieson*, 182 U. S. 461; *Vickrey v. Sioux City*, 104 Fed. 64; *Olmstead v. Superior*, 155 Fed. 172; *Thompson v. Emmett Irrig. Dist.*, 227 Fed. 560 (C. C. A. 9); *Hidalgo County Road Dist. v. Morey*, 74 Fed. 2d 101 (C. C. A. 5); *City of Jacksonville v. Bankers Life Co.*, 90 Fed. 2d 141 (C. C. A. 7). While the right to bring a suit in equity under a special head of equity jurisdiction is not tested by the question whether there is an adequate remedy at law, and a plaintiff who has the right to sue under a special head may also have a right of action at law, the loss in the present case would be irreparable if the custodian diverted the funds to the extent provided by the subsequent statutes, since it would not be possible in practice to trace these funds among the creditors of the District, even if there was a right to do so, and the custodian himself may be unable to respond in damages. Mandamus in the state court, if available, would not be an adequate remedy, since not only do appellants pray for substantial negative relief, but the remedy, to be adequate, must be on the law side of the federal courts, *Henrietta Mills v. Rutherford*

County, 281 U. S. 121, and in the federal courts mandamus for this purpose is only available as an ancillary remedy after judgment has been recovered. *Rosenbaum v. Bauer*, 120 U. S. 450.

In their brief (p. 8) the Board contends that there is no proper allegation of a threat by the defendants to take action under the subsequent statutes which would be detrimental to the plaintiffs. This is a strange contention since not only is there an allegation of threat in the bill (R. 38-39) carried by reference into each of the supplemental bills (R. 55, 208-209) but it is the duty of the defendants, as provided in the subsequent statutes, which purport to repeal all parts of the prior bond contract statutes which are in conflict with the subsequent statutes, to prepare the tax lists, collect the taxes and distribute the taxes all in accordance with the provisions of the subsequent statutes unless these subsequent statutes are determined by a court to be unconstitutional. The subsequent statutes permit no discretion on the part of these defendants to take or not to take the action provided in the subsequent statutes, nor have these defendants the power to determine whether the subsequent statutes are valid or invalid. This is not a case where these defendants may or may not execute the subsequent statutes as they see fit. In the present case, the Board of Commissioners presented to the Legislature these subsequent statutes containing the provisions reducing and diverting the taxes, and relieving the Trustees from obligations imposed on them by the bond contract statutes, with recommendation that the legislature enact the statutes, which the legislature has done. Appropriate allegations to this effect have been made (R. 31, 56-57, 59, 212-213).

The strenuous opposition which these defendants have put forth in resisting in the courts the efforts of bond-

holders to have the taxes levied by the statutes under which the bonds were issued, collected and applied to the payment of the bonds is shown in the decisions of the Florida Supreme Court in *State ex rel. Sherrill and Van v. Milam*, 113 Fla. 491, 559, 587; 153 So. 100, 125, 136. Not only have these defendants urged that the subsequent statutes are valid while they were resisting the effort of bondholders to have the proper taxes collected and applied to the payment of the bonds, but, because of the efforts of the bondholders in this respect, the Board have threatened even to abandon the District. *State ex rel. Sherrill and Van v. Milam*, 113 Fla. 584-586. Such action was taken by the Board before the 1937 statute was enacted.

Such contention is now made by the Board notwithstanding its different attitude in the district court. In the petition for rehearing (par. 9, R. 265), appellants allege as follows:

“(9) The Court in its judgment of August 2, 1938 overlooks the fact that at the oral argument of this case on March 3, 1938, Mr. Fred H. Kent, counsel for the defendant Board, admitted in open court that the 1937 Act is void in the particulars complained of as against bondholders, and explained that it was passed as part of the machinery for a proposed refunding of the indebtedness of the district.”

The contention of appellees that the jurisdiction of the federal court is not properly alleged by plaintiff is unsound since one day after the bill was filed an amendment thereof was filed (R. 54-55) which specifically alleges that the jurisdiction is based on a federal question. This is sufficient. 28 U. S. C. A., Sec. 777; *Norton v. Larney*, 266 U. S. 511; *Smith v. McCullough*, 270 U. S. 456; *Mexican C. R. Co. v. Duthie*, 189 U. S. 76. In the present case, not only does the federal question appear from the allega-

tions of the bill, and has been specifically alleged as such in the amendment, but the decision of the district court on the former motion as shown by the court's opinion was based on the presence of the federal question which was the essential matter involved and decided. *Rorick v. Board of Commissioners*, 57 Fed. 2d 1048. If necessary an amendment to state that a federal question is involved would be permitted by this court. *Norton v. Larney*, 266 U. S. 511.

The Board and Trustees contend that there has been delay on the part of the plaintiffs in seeking relief in this case (Board's Brief, p. 5; Trustees' Brief, pp. 3, 32) notwithstanding that seldom has there been such a continuous enactment of destructive statutes such as those proposed, for the purpose of destroying the bonds, by the Board of Commissioners, whose duty it was to protect the bonds. The fact that the courts determined the two statutes of 1929 and 1931 to be invalid, did not in the least deter the Board including until 1931 the five principal state officers who are the Trustees of the Internal Improvement Fund, from presenting to the legislature and recommending the passage of still other statutes, including the statute of 1937 which to a far greater extent violated the rights of the appellants in the respects in which the court had just held the earlier statutes to be invalid. Resistance in every respect which the Board could conceive has been put forward in opposing the efforts of the bondholders to have the taxes entered on the tax rolls at the proper rates and collected and applied to the payment of the bonds, and in resisting efforts to have the destructive legislation held invalid. The amount of litigation is indicated by the cases cited in the briefs on this appeal. After more than seven years of such efforts by the Board, during which time the Board obviously has been engaged in trying to exhaust and

discourage the bondholders, the Board of Trustees now state in effect that one reason why this Court should support these efforts of the Board is that the plaintiffs have been guilty of delay.

The contention of the Board (Brief, p. 8) that the prayers for relief in the bill and supplemental bills are not sufficient is unsound. Relief is asked against the Board to enjoin the members thereof from executing and enforcing the subsequent statutes especially in respect of the reduction and diversion of the acreage taxes from the payment of the bonds (R. 42, 69, 224, 225, 226), and the destruction of the relation created by the statute under which the bonds were issued in respect of the obligation of the Trustees to pay taxes on the bid off lands. Relief is asked against the custodian of the taxes by seeking to enjoin him from executing and enforcing the subsequent statutes by diverting the taxes to purposes other than the payment of the bonds (R. 42, 68). Relief is asked against the tax assessors and the tax collectors to enjoin them from acting under the subsequent statutes (R. 224, 225). Relief is asked against the Trustees of the Internal Improvement Fund by seeking to enjoin them from executing the subsequent statutes by taking action to destroy their obligation to pay taxes on the bid off lands, and by transferring tax sales certificates back to the Board for the purpose of escaping such obligation, by receiving certificates of indebtedness from the Board on the theory that the taxes paid by the Trustees on the bid off lands were an indebtedness from the Board to the Trustees and the certificates of indebtedness are given to the Trustees by the Board in payment of such indebtedness, and by enjoining the Trustees from making adjustments and plans which would achieve the same purpose (R. 69-70, 73-74, 225).

The Board also seeks to have the court hold that any action it may have taken after the court's decision and in defiance of that decision should now be approved by the court on the ground that such action might result in inconvenience or hardship. Protection is not given by the court under such circumstances. *Jones v. Securities & Exchange Commission*, 298 U. S. 1.

II. The appellants have a direct right of appeal to the Supreme Court of the United States under Sec. 266 of the Judicial Code.

Appellants have alleged that the subsequent Everglades statutes of 1929, 1931 and 1937 violate the federal constitution; they have asked for interlocutory injunction and they have pressed the matter to hearing. The defendants are state officers and the state statute is of general application (*Ex Parte Collins*, 277 U. S. 565).

1. The Board of Commissioners as defendants are state officers within section 266 of the Judicial Code, and the state statutes attacked are of general application.

The lands within the District constitute a substantial part of the lands granted to the State of Florida by the United States under obligation by the State to drain and reclaim them. The State vested these lands in the Trustees of the Internal Improvement Fund, with duty to improve them, and the Trustees did make certain improvements therein; Everglades Drainage District was then created in order that the improvements might be made more rapidly out of the proceeds of bonds to be sold to the public. The improvements were to be made for the general health and welfare and would make these State lands suitable for cultivation and salable. The duty of the State

and of the Trustees in respect of these lands continued after this District was formed.

The Board of Commissioners designated by the Everglades statute of 1913 consisted of the same five principal state officers who have always been the Trustees of the Internal Improvement Fund, and they continued as the Board of Commissioners during all the time in which bonds of the District were being issued and improvements were being made out of the proceeds of the bonds and until the year 1931. The relation of the Trustees to the lands in the District continued not only through the fact that they were Trustees of all the swamp and overflowed lands of the state, and still owned, at the time the bill was filed, approximately 800,000 acres of land in the District, but, also, because the Everglades statute in existence during the time the bonds were issued, provided that the lands not purchased at tax sales for the amount of the defaulted taxes should be bid off for the Trustees, and these lands would thus revert to the Trustees.

The subsequent statutes not only reduced the taxes by seventy-five per cent. while the bonds were in default, but they diverted a substantial part of the reduced taxes to other purposes than the payment of the bonds. These subsequent statutes were presented to the legislature by the Board with recommendation that they be enacted. This Board was performing in part the function of the State of Florida in respect of these state lands, and in the performance of this function they determined what improvements should be made, where they should be made and when they should be made.

The state court has made clear the interest of the State in the lands in this District, the public nature of the District, and the State governmental functions which the

Board of Commissioners were under duty to perform. In *Arundel Corporation v. Griffin*, 89 Fla. 128, the court said:

"The 'Board' created by the above quoted statute is an agency of the State and authority conferred upon the Board is exercised for the State and not for a subdivision of the State or for any private purpose or company."

In the same case, the court also stated:

"The lands alleged to have been tortiously flooded are in a vast area of low lands known as swamp and overflowed lands * * * and the plaintiffs acquired and hold them with the knowledge that an extensive system of drainage operations is necessary to permanently reclaim the lands for settlement and cultivation, that such extensive operations are being conducted by the State through the agency of State officials under statutory authority. * * *"

In *Martin v. Dade Muck Land Co.*, 95 Fla. 530, the Court said:

"The bond obligation is that of the district alone, though the drainage operations are by virtue of the statute conducted by State officials who under Chapter 610, Acts of 1855, are *ex officio* Trustees of the Internal Improvement Fund and who, under Chapter 6456, Acts of 1913, constitute the Board of Commissioners of the Everglades Drainage District. * * * (P. 572)

The Everglades Drainage District is a statutory subdivision of the State for special governmental purposes. It embraces a large portion of each of several counties, and the administration of its governmental affairs is wholly distinct from the government of the several counties. * * * (P. 574)

The obligation of the State to drain the granted lands was recognized in the enactment of Chapter 610,

approved January 6, 1855, which placed the lands in a separate fund to be called the Internal Improvement Fund of the State of Florida, and vested the lands in the Governor of the State and four other named State officials and their successors in office as Trustees of the Internal Improvement Fund of Florida, in trust for the purposes defined by the statute. Section 16 of the Act provides 'that the Trustees of the Internal Improvement Fund shall * * * make such arrangements for the drainage of the swamp or overflowed lands, as in their judgment may be most advantageous to the Internal Improvement Fund, and the settlement and cultivation of the lands.' Sec. 1070, Rev. Gen. Stats., 1920. In furtherance of the duty and purpose to comply with the granting Act of Congress requiring the lands to be drained, the State officers and their successors in office who are by Chapter 610, Trustees of the Internal Improvement Fund, with statutory powers and duties with reference to draining the swamp and overflowed lands, are by Chapter 6456, Acts of 1913 (succeeding Chapter 5377, Acts of 1905 and Chapter 5709, Acts of 1907), made the 'Board of Commissioners of Everglades Drainage District', with authority to establish and construct a system of canals, levees, dikes, draws, locks and reservoirs to reclaim the lands within the district. * * * (P. 580)

The Everglades drainage improvements are governmental and extensive, having reference to surface drainage, flood control, health, sanitary, transportation, land development and common betterment, and may extend to surface irrigation and perhaps other public improvements and enterprises designed to enhance the general welfare. * * * (P. 581)

The drainage of the Everglades is not a local undertaking initiated by interested parties merely to relieve the overflowed lands of surface water for the sole benefit of the lands to be drained; but the drainage being done in the Everglades Drainage District is by a State agency, under statutory authority. The

drainage removes surface water, reduces the level of subsurface percolating water and makes the lands all over the district more useful for high development. The public improvement is designed for the immediate and potential permanent general benefit to the entire statutory district containing millions of acres, by making the lands both public and private that are affected by surplus water, fit for improvement and development by growing thereon fruit, vegetable and staple crops, live stock and other products, by the erection of commercial, residential and other structures, by establishing business enterprises, transportation facilities, better flood control, sanitary, health and general welfare conditions, and by making the lands in the district that are not overflowed, more accessible from and over lands to be drained, and more valuable for all useful purposes. . . . (P. 584)

The Board of Commissioners consisted during all the time bonds of the District were being issued of the five principal State officers; by the 1929 statute the Board was increased to ten members, five of whom were the five principal State officers, the other five being landowners in the District, appointed by the Governor of the State; by the 1931 statute (sec. 2) the five landowners appointed by the Governor became the sole members of the Board of Commissioners and they were required to take the oath prescribed in the state constitution to be taken by state officers, as provided in the statute (sec. 3); this arrangement was continued by the 1937 statute (sec. 2). This Board was the agent of the State of Florida in respect of the 4,000,000 acres of land in this tax district for the express purpose of making the improvements in these lands in order to carry out the obligation of the State to the United States and for the purpose of making the lands suitable for settlement and cultivation, and in this respect they were performing a State function of great importance. The Ever-

glades Drainage District, comprising 4,000,000 acres of land in many counties in Florida all of which under the statute may revert to the State, is one of the most important areas in the entire State of Florida. The Board of Commissioners are State officers within the provisions of Section 266, in that they are commissioners carrying into effect the state statute in respect of this important property, a substantial part of which was and is now owned by the State of Florida and in respect of all of which the State has the special duty to drain and reclaim.

2. The State Treasurer is a state officer within the meaning of Section 266.

Plaintiffs seek to enjoin the State Treasurer as custodian of the acreage taxes from applying the proceeds of these taxes to any purpose except the payment of the bonds (R. 42, 68). The State Treasurer not only is custodian of these trust funds but he is one of the Trustees of the Internal Improvement Fund and was from the time the District was formed; until the 1931 statute was enacted he was a member of the Board of Commissioners and by that statute was retained as ex officio Treasurer of the District. He was made custodian because this District is a state project of great importance, and because it was intended by the legislature to assure the bondholders that the taxes levied for the payment of the bonds would be held as security for the bonds and applied to that purpose. This tended to make the bonds salable, and thus to make the funds of the bondholders available for the improvement of these State owned lands in this important project.

3. The Trustees are state officers within the meaning of Section 266 of the Judicial Code.

The first supplemental bill prays (par. 4, R. 64, as amended R. 69) that the Trustees be enjoined from trans-

ferring to the Board of Commissioners tax sales certificates in respect of bid off lands, that the Trustees be enjoined (par. 8, R. 66, as amended R. 71) from receiving certificates of indebtedness from the Board of Commissioners and from disposing of their property except in accordance with the bond contract statutes; and in the second supplemental bill it is prayed (par. 7, R. 225) that an injunction be granted against the Board and Trustees restraining them from entering into any agreements or making any settlement between them in the consummation of certain debt refunding and adjustment plans. The fourth prayer of the original bill (R. 42) is for an injunction restraining the Board from preparing and forwarding to the tax assessors tax lists unless such tax lists shall include all the lands of Everglades Drainage District on which taxes were imposed by the statutes under which the bonds were issued, and also include drainage taxes on all such lands at the rates provided in said statutes, applying to lands bid off for the Trustees as well as other lands in the District. There is a similar prayer in the second supplemental bill (par. 3, R. 224).

Everglades Drainage District v. Florida Ranch & Dairy Corporation, 74 Fed. (2d) 914, is distinguishable not only on the grounds set forth on pages 5 and 6 of our brief, that is, that there was in that case an adequate remedy at law and that the Trustees and State Treasurer were not parties, but also for the reason that the only statute concerning which the plaintiffs complained in that case was the statute of 1925 which levied the largest total amount of taxes levied by any of the statutes which authorized the issue of bonds of the District. As a bondholder whose bonds were issued under the 1923 statute, the plaintiff was complaining of a statute which increased the total amount

of the taxes levied for the payment of the bonds. As a landowner the plaintiff was complaining only that the taxes levied on his lands in the District by the 1925 statute were too high.

In our case we seek to restrain statutes of the State passed after the issue of the bonds which were presented to the legislature by State officers with recommendation that they be passed for the purpose of destroying the bonds issued by a State project to improve State lands which it was the duty and purpose of the State to improve.

The case of *McNee v. Wall*, 4 Fed. Supp. 496, rev'd 296 U. S. 547, is also distinguishable on this point since the District involved in that case was obviously a local district, for the purpose of creating an inlet at the St. Lucie Canal and the members of the Board were elected by the residents of that District as provided by the statute.

III. By the statutes under which the bonds are issued the Trustees are under obligation to pay taxes on the lands in the District bid off to them at tax sales.

(a) *The contention of the Trustees and the Board that the statute should not be interpreted to impose an obligation upon the Trustees to pay taxes on bid off lands is unsound.*

The principal argument of the appellees that there is no obligation upon the Trustees to pay the acreage taxes upon the lands bid off for the Trustees at the tax sales is based upon the meaning of the word "held" as used in the last paragraph of section 5 of the 1913 statute, the taxing section of the statute. In interpreting the meaning of the word "held", the Trustees make a distinction between the lands in the District held by them but not bid

off for them at tax sales, and those lands bid off for them at the tax sales (Trustees' Brief, p. 3). They state that the only question discussed in their brief is the liability of the Trustees for the payment of delinquent taxes on lands in the District which had been bid off for them, and they admit that the Trustees are liable for the taxes on the lands in the District held by them but not bid off for them (Trustees' Brief, p. 3). The argument of the Trustees in respect of the meaning of the word "held" in section 5 is (Trustees' Brief, p. 12) that this word has reference only to lands owned by the State of Florida and held by the Trustees as State agents, since the section originally enacted in 1913 is to be construed with reference to the circumstances then existing and the statutes then in force, and that upon that theory the section of the statute cannot be construed to apply to lands held by the Trustees bid off for them for the reason that no such statute existed in 1913 and did not exist until passed by the legislature of 1917.

The word "held" in the last paragraph of section 5 is used in respect of lands of the Trustees on which acreage taxes shall be paid by them. These taxes are imposed by the statute enacted in a given year but the taxes are levied and imposed for that year and for specified years in the future. The lands on which taxes are levied for a given year, the year 1939 for example, are the lands which are held on the date in that year when the tax lien becomes effective. The lands which are taxable, whether of the Trustees or of other holders, for the year 1939, are not the lands held by them in the year 1913 when the Everglades Statute was originally enacted but those lands held by them in the year 1939. The reason that the Trustees are required to pay the taxes for the year 1939 on the lands held by them in the year 1913 and also in the year 1939, is not

because the Trustees held the lands in the year 1913 but because they hold them in the year 1939.

As the statute was amended from time to time to authorize the issue of additional bonds, each amendment imposed additional taxes upon all the lands in the District, and these additional taxes applied to the lands in the District on the tax date in each year specified in the amendment. The obligation of the Trustees under such amendment of the statute was to pay the taxes on the lands held by them on such dates regardless of the manner in which they acquired the lands or the nature of the lands which they held in 1913. Such amendments imposing additional taxes were made after section 12 of the original statute of 1913 had been amended in 1917 by providing for the bidding off of the lands for the Trustees. Even in respect of the lands of the Trustees not bid off for them, the additional taxes imposed by the amendment would apply to the lands held by them when the amendment became effective, and not to the lands held by them in the year 1913. If the Trustees for a period after 1913 held no lands in the District whatever and later acquired lands in the District, the lands so acquired would be subject to the tax and the Trustees would be required to pay the taxes thereon regardless of whether the lands were acquired by the Trustees by being bid off for them or in any other manner. The Trustees' contention as to the meaning of the word "held" would release them from the payment of taxes on lands acquired after 1913 in any manner whatever. We urge that the word "held" applies to all lands held by the Trustees on the tax day, whether held in 1913 or acquired thereafter, and whether acquired through bidding off at tax sales or by purchase or in any other manner.

(b) *The statute, when construed to impose upon the Trustees the obligation to pay the acreage taxes on the bid off lands, does not violate the Florida Constitution because of defect in the title to the statute.*

The Trustees in their brief (p. 29) contend that the title to Chapter 7305 does not indicate an intention to require the Trustees to pay taxes on bid off lands, and if the act is construed so to do, it would be unconstitutional as in violation of Sec. 16 of Article 3 of the Florida Constitution, which provides:

“Each law enacted in the legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be amended or revised by reference to its title only; but in such case the act, as revised, or section, as amended, shall be reenacted and published at length.”

The provisions of Chapter 7305, Laws of 1917, were embodied in the Revised General Statutes of Florida; for example, section 12 requiring the bidding off of tax delinquent lands for the Trustees became section 1171 R. G. S. The bonds in controversy are those issued at various times between July 1, 1920 and July 1, 1925 (Trustees' Brief, p. 5). Sec. 6 of Chapter 7838, Laws of 1919, made the Revised General Statutes effective on the 30th day after the date of the Governor's proclamation announcing their publication. On January 7, 1921, the Governor published his proclamation announcing that the Revised General Statutes would become effective on the 6th day of February, 1921.

The Supreme Court of Florida has held that defects in the title of acts which are embodied in a revision are of no moment. *Carlton v. State*, 63 Fla. 1, *Christopher v. Mungen*, 61 Fla. 513, 55 So. 273, *McConville v. Ft. Pierce*

Bank & Trust Co., 101 Fla. 727. In the *Carlton* case the court said (p. 8):

"It is first contended that the original act of 1901 of which this section is a part, is unconstitutional because its title was not broad enough. This is now of no moment as the act is brought forward and reenacted in several sections of the General Statutes of 1906."

In the *McConville* case the court said (p. 730):

"As section 13 of Chapter 6426, Acts of 1913, became, by revision, section 4167 Revised General Statutes of Florida, 1920, it is clear that under the rule in such cases any defect in the original title was cured by such revision."

But the title to Chapter 7305 was sufficient even before that amendment was embodied in the Revised General Statutes of Florida of 1920. The title of Chapter 6456 of 1913, the original Everglades statute, which contains no specific reference to the Trustees or to the payment of taxes by them, has not been questioned by these defendants as insufficient, although the 1913 statute imposed upon the Trustees the duty to pay taxes on lands in the District held by them and in fact the Trustees in their brief (p. 3) admit they are liable for the taxes on the lands which they own in the District, as agents of the State; the title of the 1917 statute in a similar manner, states that it is an "Act to Amend Section 9 of Chapter 6456 * * * Relating to the Creation of Everglades Drainage District of the State of Florida, Defining Its Boundaries and Prescribing Its Powers and Authorizing the Levy and Collection of Taxes and Assessments Upon the Lands in Said District for the Purpose of Draining and Reclaiming the Said Lands and Carrying Into Effect the Provisions of Said Act." In *Lainhart v. Catts*, 73 Fla. 735 the Florida

Supreme Court, considering the title of Chapter 6456 of 1913 said:

"The title of the Act sufficiently expresses its subject, certainly enough so as to give reasonable notice of the matters dealt with by the Act and as to its purpose and scope. The title need not be an index to the Act, it being sufficient if it may reasonably lead to inquiry as to its contents."

In *Martin v. Dade Muck Land Co.*, 95 Fla. 530, it was urged that the title to Chapter 12016, Laws of Florida, 1927, was insufficient under Article 3, Sec. 16, of the State Constitution. The title was as follows:

"AN ACT to Authorize the Issuance of Additional Bonds of the Everglades Drainage District of Florida, and to provide for the Payment of Such Bonds."

One express provision of the Act was construed to provide that the Trustees of the Internal Improvement Fund were required to pay the acreage taxes upon lands in the District bid off for them at tax sales. The court in holding that the title to the Act was sufficient said (pp. 573-4):

"Other provisions of the Act that are specifically asserted to be invalid, appear to be properly connected with the one general subject that is briefly expressed in the title of the Act; . . . The title of the Act is sufficient to express a single subject and is not in any way misleading as to its valid provisions."

(c) *This court should not follow the decision of the Supreme Court of Florida in State ex rel., Board of Commissioners v. Sholtz*, 112 Fla. 756.

The Board as the sole relators did not, and could not, present the matter involved properly to the State court

in the *Sholtz* case. To show that this is true, we consider one only of the important considerations which should have been presented to the court in that case.

The Trustees in their brief (p. 19), state in respect of the practical interpretation made by the Board and by the Trustees through the payment by the Trustees of the taxes on the bid off lands that, while it is well settled that a departmental construction of an Act is a guide to the court in its construction, it is not conclusive on the court, and should not be followed when the public benefit or right is involved and when the construction itself is manifestly incorrect. They also state (p. 19) that the erroneous construction by the then Trustees is not a part of the bond contract and no rights of appellants have been violated by the Trustees refusing "to longer follow this erroneous and manifestly incorrect construction". The Trustees do not question the qualifications or good faith of their predecessors in making this practical construction over a period of years while bonds of the District were being sold, nor do they deny that in administering this statute it was necessary to make such a practical construction or that the Trustees represented to the bond purchasers that the Trustees' practical construction was the correct construction.

Since it is admitted by the Board and by the Trustees that the practical construction is a guide to the court, and since that construction was made by the five principal officers of the State acting in the same capacity in which the Trustees and the present Board are acting, it necessarily follows that the court in the *Sholtz* case should have had the benefit of this guide in making its construction of the statute. This raises the question whether the state court in the *Sholtz* case did receive such assistance, since no reference whatever is made in the opinion of the court

in the *Sholtz* case to the practical construction of the statute made by the Trustees and the Board in the payment by the Trustees of acreage taxes on the bid off lands during a period of years.

In determining whether the court in the *Sholtz* case had a reasonable and proper opportunity to construe the statute, it is important to inquire what position the Board took in that case in reference to this matter of practical construction. The members of the Board, who were the sole relators in the *Sholtz* case, were appointed by the Governor of the State, who was one of the Trustees and a respondent in that case. On this appeal, the Board rely upon the Trustees to state the position of the Board in respect of the interpretation of the statute (Board's Brief, pp. 2, 10), as to the obligation of the Trustees in respect of lands bid off for them. On the question of the liability of the Trustees to pay taxes on the bid off lands, the interests and purposes of the Trustees and of the Board and the interpretation made by them of the bid off provision in the statute were always the same.

In their briefs in this court neither the Trustees nor the Board purport to state what position they took before the state court, or whether any brief was filed by the Board, and if so what position the Board took therein especially in respect of the practical construction of the statute by the Trustees and the Board. The position of the Board is doubly difficult because the Board presented and recommended to the legislature in 1931 the bill containing the provision for bidding off the lands at tax sales for the Board, instead of for the Trustees as required by the bond contract statutes. In taking such action the Board obviously was seeking to promote the interests of the Trustees. In presenting such a bill to the legislature for the purpose

of reducing the taxes and diverting their proceeds, as well as changing the arrangement for bidding off for the Trustees, the Board were also seeking to weaken if not to destroy the bonds of the District. It would be impossible for the present Board and Trustees to convince this court that the Board as relator in the *Sholtz* case held the view that the practical construction was a vital matter in construing the statute, that they then so regarded it, that they were not more interested in assisting the Trustees to evade their obligations than in enforcing the statutes upon which the bondholders relied, or that they presented to the state court all the considerations bearing on the interpretation of the statute in good faith and to the best of their ability. Anything less done by the Board makes the judgment in the state court a mere form.

In their brief in this court the Trustees state (p. 11) that the records in the *Sholtz* case show that Messrs. Watson & Pasco & Brown, as counsel for appellants, filed a brief in that case as *amicus curiae* urging the same contentions urged on this appeal by appellants. In the reported case the names of the attorneys who appeared for relator and for respondents are given, but there is no reference whatever to any attorney appearing or having been permitted to appear as *amicus curiae*, or of any brief having been filed *amicus curiae*; nor is there any reference whatever in the opinion to the practical construction of the statute made by the Board and the Trustees. It would be strange indeed if the court in the *Sholtz* case while making no reference whatever to the practical construction of the statute had considered a brief containing a discussion on that point. Since the Trustees have stated that there was filed in the *Sholtz* case a brief *amicus curiae* urging the same contentions presented on this appeal by

appellants, we annex as "Exhibit A" to this reply brief the only paper forwarded to the court in that case by Watson & Pasco & Brown from which it will appear that Watson & Pasco & Brown merely endeavored to indicate to the court why the court should not determine in that proceeding the questions which were there involved.

In our main brief we have set forth cases showing that this court in a suit involving impairment of the obligation of a contract will make its own determination as to whether there is a contract, what its obligation is and when it has been impaired (Brief, p. 84), and that this Court will not be bound by a decision, where, as in the *Sholtz* case, the relator could not and did not properly present to the Court a real controversy.

(d) *An obligation of the Trustees to pay the taxes on the lands bid off for them at tax sales is not a violation of the State Constitution prohibiting the issue of bonds by the State or the lending of its credit.*

The Trustees contend that if the Everglades statute, Chapter 6456, Laws of Florida of 1913, sec. 12, as amended in 1917 by Chapter 7305, is construed to impose an obligation upon the Trustees to pay the acreage taxes upon the lands bid off to them at tax sales, the statute as so construed will violate the State Constitution, Secs. 6 and 10, Article 9, prohibiting the issue of State bonds or the lending of State credit, notwithstanding the decisions of the state court in *Trustees v. Bailey*, 10 Fla. 112, and *Martin v. Dade Muck Land Co.*, 95 Fla. 530. In the *Bailey* case the court held that the pledging of the assets of the Trustees, among other things, to pay interest on bonds issued by railroads under the provisions of the statute creating the Trustees of the Internal Improvement Fund (Chapter 610

of 1855), did not violate the State Constitution, Sec. 11, Article 13, prohibiting the pledging of the faith and credit of the State. The court said:

"It is very clear that the general assembly could not issue what are known as 'faith bonds' in the banking history of this country, thereby pledging the faith and credit of the state to raise funds in aid of any corporation, but we think it equally clear that the general assembly may convey in trust, pledge or mortgage, for the benefit of those who may aid in the construction of certain internal improvements, a fund already existing and possessed by the state through the cession of the United States, * * *."

For the present purpose we think that the distinction which the Trustees purport to make between the provision contained in the State Constitution when the *Bailey* case was decided and the provisions now contained in the State Constitution is without substance.

In any event, the same provisions were contained in the State Constitution when *Martin v. Dade Muck Land Co.* was decided as are now contained in the constitution. In the *Dade Muck Land* case there was directly involved the question whether a 1927 statute, imposing upon the Trustees the duty to pay drainage taxes on lands bid off for them by the tax collectors under that statute, violated sections 6 and 10 of Article 9 of the State Constitution, and it was held that these sections were not violated by that statute as construed by the Florida Supreme Court. The Trustees in their brief (pp. 18 and 29) have not distinguished *Martin v. Dade Muck Land Co.*; they refer to the fact that the 1927 Act was later repealed, and also to the fact that the court in that case considered what assets would be available for the payment of such taxes; but these matters have no bearing upon the decision by the court

that the statute in the respect here considered did not violate the State Constitution.

We do not understand that the Trustees contend that every obligation incurred by the Trustees of every kind violates Sections 9 and 10 of the State Constitution. The Trustees, before the formation of the Everglades Drainage District, made contracts for the construction of improvements in Everglades Drainage District. *Trustees v. Root*, 63 Fla. 666. The Trustees, in their brief (p. 3), admit that they are liable for the taxes on the lands which they own in the Everglades Drainage District; there is no contention that such obligation violates the State Constitution. Under the *Dade Muck Land* decision, the Trustees were liable for the taxes on the bid off lands under the provisions of the 1927 statute. So far as the provisions of the State Constitution are concerned, there is no difference between the obligation of the Trustees to pay the taxes on the lands in Everglades Drainage District which they owned at the time of the formation of the District and their obligation to pay taxes on the bid off lands. The Everglades statute vests the title of the bid off lands in the Trustees after the two-year period of redemption has expired. The Trustees do not purport to show any basis on which the Trustees would be liable for other obligations without violating the State Constitution but could not be liable for the taxes on the bid off lands, and they are confronted with the decisions in the *Bailey* case and in the *Dade Muck Land* case which remove the possibility of such a distinction.

(e) *A suit against the Trustees is not a suit against the State.*

The Trustees contend that a suit against them is a suit against the State in violation of the 11th Amendment of

the Constitution of the United States. Although the Trustees have been parties defendant in numerous cases since the enactment of the statute creating the Trustees of the Internal Improvement Fund in 1855, the appellees have not cited a single case in which it has been held that a suit against the Trustees is a suit against the State. In *Trustees v. Bailey*, 10 Fla. 112, decided in 1862, it was held that a suit against the Trustees was not a suit against the State, the court saying (p. 132):

"The only question remaining is whether the Complainant has a right to the remedy by injunction prayed for against the Trustees. It has been argued that he has not, because the Trustees represent the State, which cannot be sued. It is true the State cannot be sued, but where the State appoints an Agent or Trustee to pay a particular debt, or class of debts, with a specific fund, it has never yet and never can be held that the party interested in the fund may not intervene by injunction to prevent such agent from appropriating the fund to an entirely different purpose. Such is the case here."

In *Wilson v. Mitchell*, 43 Fla. 107, the court said:

"The bondholder had the right to compel the trustees to discharge any duty under the statute designed for his benefit by appropriate legal proceedings, and to enjoin them from misappropriating funds to which the bondholder was entitled to look for his payment: * * *"

In *Trustees v. Gleason*, 15 Fla. 384, and in *Trustees v. Root*, 59 Fla. 648, a demurrer by the Trustees to the complaint was overruled.

In the Everglades' statute (Sec. 23, R. G. S. Sec. 1182) it is provided that any bondholder may sue any of the officers or persons mentioned in the Everglades statute in relation to "the said bonds, or to the collection, enforce-

ment and application of the taxes for the payment thereof: provided, however, that no obligations authorized by this article shall be construed as an obligation of this State, but only as an obligation of the drainage district herein created". Section 1055 R. G. S. also provides that the obligation of the Trustees may be enforced.

This matter is covered fully in our main brief (pp. 687).

The decree of the district court is erroneous and should be reversed.

Dated March, 1939.

Respectfully submitted,

WILLIAM ROBERTS,

W. H. WATSON,

SAMUEL PASCO,

Counsel for Appellants.

EXHIBIT A.**IN THE
SUPREME COURT OF THE STATE OF FLORIDA**

**STATE EX REL. BOARD OF COMMISSIONERS OF EVERGLADES
DRAINAGE DISTRICT,**

vs.

**DAVID SHOLTZ, GOVERNOR, J. M. LEE, COMPTROLLER, CARL
D. LANDIS, ATTORNEY GENERAL, W. V. KNOTT, TREASURER,
AND NATHAN MAYO, COMMISSIONER OF AGRICULTURE, AS
AND CONSTITUTING THE TRUSTEES OF THE INTERNAL IM-
PROVEMENT FUND OF THE STATE OF FLORIDA.**

Now come W. H. Watson, Samuel Pasco and Clarence
J. Brown, as *amici curiae*, and suggest and show to the
Court:

1. That there is no real controversy between the relator
and the respondents, who are hereafter to be referred to
as the board and the trustees. This appears from:

(a) The alternative writ of mandamus, which al-
leges in paragraph 6 thereof the transfer to the board
by the trustees on September 18, 1931, pursuant to the
provisions of Section 65 of Chapter 14717 of the Acts
of 1931, of the tax certificates theretofore issued to the
trustees, save those retained by the trustees under the
provisions of the said Act; and by paragraph 9 of
said writ showing the pendency in the federal court
of suit begun May 19, 1931 by bondholders, to prevent

such transfer and to have the said trustees held to be required to pay for tax certificates and to purchase property offered at tax sales and not bid in by others.

(b) The opinion of the court in *Rorick, et al. vs. Board of Commissioners, et al.*, 57 Fed. 2d 1048, showing the questions involved in that litigation and the challenge by the board and the trustees by motion to dismiss of the contention of the bill that Section 65 of Chapter 14717 of the Acts of 1931 was void as to bondholders.

(c) The answer of the board in the suit in the federal court mentioned in paragraph 9 of the alternative writ, a copy of which answer is hereto attached and made a part hereof, by which answer it asserts the validity of Section 65 of Chapter 14717 as against bondholders, and that the trustees are not required to pay for tax certificates, but took and held the same as trustees for Everglades Drainage District.

(d) The fact, appearing from published notices of application for the legislation which became Chapter 14717, Acts of 1931, made by W. I. Evans, Esquire, as attorney of the board, and the proof of publication of Senate Bill 332 (which became Chapter 14717) made by the said W. I. Evans, Esquire, and attached to said bill upon its introduction in the State Legislature, that the said Board proposed said legislation, evidently prepared by its said attorney, and procured its passage.

(e) The character of the argument submitted by the relators in this cause.

Under such circumstances the suit should be dismissed, for when it is apparent that the object of a suit is to obtain

a decision that would affect third persons who are litigating the same question in another court, the suit should be dismissed. Any attorney is competent to call the matter to the attention of the court.

Ward vs. Alsup (Tenn.), 46 S. W. 574, 575.

Lord vs. Veazie, 8 How. 251, 12 L. E. 1067.

2. It appears from the allegations of paragraph 9 of the alternative writ that there is pending in the United States District Court for the Northern District of Florida a suit by bondholders against the board and the trustees involving the precise questions presented by the alternative writ, and the motion of the trustees to quash, and that such court has taken jurisdiction of said suit and has decided the precise question by an opinion, unreversed, which is hereby referred to and adopted as a part hereof as the same appears at page 1048, *et seq.*, of 57 Fed. Rep. 2d Series.

The federal court being the first to take jurisdiction that jurisdiction is exclusive and cannot be entrenched upon or impaired by any other court. Both the board and the trustees are parties to the litigation in the federal court and it is not competent for them to defeat or impair the federal jurisdiction by proceedings in the state court involving the same legal questions.

Prout vs. Star, 188 U. S. 537, 544-5; 47 L. E. 584, 587.

Ex parte Young, 209 U. S. 123, 161; 52 L. E. 714, 729-30.

Rickey Land & Cattle Co. vs. Miller & Lux, 218 U. S. 258, 54 L. E. 1032.

Astiazaran vs. Santa Rita etc. Co., 148 U. S. 80, 37 L. E. 374.

See also: -

Mercantile Trust Co. vs. Roanoke etc. R. Co., 109 Fed. 3, 9.

Sharon vs. Sharon (Calif.), 23 Pac. 1100, 1101.

Adams vs. Mercantile Trust Company (C. C. A. 5), 66 Fed. 621.

Detroit R. Co. vs. Interstate Commerce Commission (App. D. C.), 277 Fed. 537.

Wade vs. Clower (Fla.), 114 So. 548.

In the language of the Supreme Court of the United States:

"It was unnecessary, unwarranted in law and grossly disrespectful to the Circuit Court to invoke the interposition of the state court as to anything within the scope of the litigation already pending in the federal court."

New Orleans vs. New York SS Co., 20 Wall. 387, 393, 22 L. E. 354, 357.

Moreover, it appearing that the precise question has been decided in the pending federal suit (preliminary it is true) to which both the board and the trustees were parties, that decision becomes the law to them, binding on both alike until modified or reversed.

In re Smith Estate (Mont.), 199 Pac. 696, 704.

Southern Pacific R. R. Co. vs. U. S., 168 U. S. 1, 42 L. E. 355.

This seems to follow because in the federal suit and in conformity to the opinion therein referred to, the motions of the board and the trustees to dismiss the bill were overruled, as appears from a copy of the order hereto attached.

It follows, therefore, that to prevent conflict with federal court, which is unseemly, this court should decline to proceed to any examination of the questions presented or if it proceed at all should proceed in conformity to the law as declared by the federal court in the suit there pending, to which both the board and the trustees were parties. At any rate, if this court will not proceed in conformity to the opinion of the federal court, it will for the present suspend proceedings in this mandamus suit until the matter in the federal court is tried and determined.

Wade vs. Clower, Fla. , 114 So. 548

Respectfully submitted,

W. H. WATSON,
SAMUEL PASCO,
CLARENCE J. BROWN.



MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

441

3

8

9

9



the
the
ed.
the
nd-
ies.
ity
ent
uit

FILE COPY

U. S. Supreme Court, U. S.

FILED

MAR 20 1939

CHARLES ELMORE ORRLEY
CLERK

IN THE
SUPREME COURT OF THE
UNITED STATES.

October Term 1938

No. 554

H. C. RORICK, JOSEPH R. GRUNDY and
J. R. EASTON,

Appellants,

vs.

BOARD OF COMMISSIONERS OF EVERGLADES
DRAINAGE DISTRICT, etc., et al.,

Appellees.

BRIEF FOR APPELLEE, BOARD OF COMMISSIONERS
OF EVERGLADES DRAINAGE DISTRICT.

FRED. H. KENT
C. G. ASHBY,

*Counsel for Appellee,
Board of Commissioners
of Everglades Drainage
District.*

SUBJECT INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
STATEMENT	3
ARGUMENT	8
1. The Unconstitutionality of a State Statute Is Not of Itself Ground For Equitable Relief.....	8
2. The Right To The Relief Sought Against The Trustees of The Internal Improvement Fund Has Been Denied By The Supreme Court of Florida.....	10
3. The Lower Court In Dismissing The Suit Pointed Out That The Appellants Had An Adequate Remedy at Law.....	10
4. Having An Adequate Remedy At Law The Ap- pellants Are Not Entitled to Proceed in Equity.....	13
5. Under the Eleventh Amendment to the Constitu- tion of the United States the Court Had No Jurisdiction To Entertain This Suit.....	17
6. Chapter 6456, Laws of Florida, 1913, is a Con- stituent Part of Appellants' Bond Contract.....	21
7. The Statute in Question Must Be Construed so as to Give Effect to the Legislative Intent.....	22

8. The Proceeds of the Acreage Taxes are Statutory Funds Which, Among Other Purposes, are Expressly Appropriated to the Payment of Expenses Incurred by the District.....	23
9. Judicial Constructions That Payment of the Expenses of the Board May be Made From the Acreage Taxes Collected do not Impair Appellants' Contract	32
10. The Provisions of Subsequent Acts Levying Additional Taxes for the Payment of the Expenses of the Board Are Not Invalid.....	34
CONCLUSION	40

TABLE OF CASES

	Page
93 A.L.R. at pages 1495-1505.....	15
Bannerman v. Catts, 80 Fla. 170, 85 So. 336.....	31
Coquard v. Indian Grave Drainage Dist. (C.C.A. 7), 69 F. 867.....	14
Cross Lake Shooting and Fishing Club v. Louisiana, 224 U.S. 632.....	33
Ennis Water Works v. Ennis, 233 U.S. 652.....	21
Everglades Drainage District vs. Florida Ranch and Dairy Corporation, 74 F. (2d) 914.....	11
Heine v. Board of Levee Comrs., 19 Wall, 655, 22 Law Ed. 223.....	36
Hopkins v. Clemson Agricultural College, 221 U.S. 636.....	18
Knott vs. United States ex rel. Rorick, 69 Fed. (2d) 708.....	35, 39
Lainhart v. Catts, 73 Fla. 735, 75 So. 47.....	31
Long Sault Development Company vs. Call, 242 U.S. 272.....	33
Martin vs. Dade Muck Land Company, 95 Fla. 580, 116 So. 449.....	20
Minnesota vs. Northern Securities Company, 194 U.S. 48, 63.....	19
New Jersey vs. Sargent, 269 U.S. 328.....	9
Pape v. St. Lucie Inlet Dist. and Port Authority, (C.C.A. 5) 75 F. (2d) 865.....	15
Postal Telegraph Cable Company vs. Alabama, 155 U.S. 482, 487.....	19

Realty Bond & Share Co. v. Englar, 104 Fla. 329, 336, 337; 143 So. 152	22
Rees v. City of Watertown, 19 Wallace 107, 22 Law. Ed. 72	37
Rorick vs. Board of Commissioners of Everglades Drain- age District, 27 F. (2d) 377	20
Rorick vs. Board of Commissioners, 57 Fed. (2d) 1048	21, 27, 34
State v. DeWitt C. Jones Co., 108 Fla. 613, 147 So. 230; 59 C.J. 943	22
State ex rel. Board of Commissioners v. Sholtz, 112 Fla. 756, 150 So. 878	10
State of Florida v. Anderson, 91 U.S. 667, 670, 676	19
State Highway Commission of Wyoming vs. Utah Con- struction Company, 278 U.S. 194, 199;	19
State of Florida v. Sullivan, 95 Fla. 191, 207; 116 So. 255	22
State ex. rel. Sherrill vs. Milam, 113 Fla. 491, 153 So. 125	27, 30
State ex rel. Yonge vs. Franklin, ____ Fla. ____, 184 So. 237	31
Terrace vs. Thompson, 263 U. S. 197	9
Title 28 U.S.C.A. Section 384	13
Walkley v. City of Muscatine, 6 Wall. 481, 18 L. Ed 930	14
14 Ruling Case Law 321	9

**IN THE
SUPREME COURT OF THE
UNITED STATES**

October Term 1938

No. 554

**H. C. RORICK, JOSEPH R. GRUNDY and
J. R. EASTON,**

Appellants,

vs.

**BOARD OF COMMISSIONERS OF EVERGLADES
DRAINAGE DISTRICT, etc., et al.,**

Appellees.

**BRIEF FOR APPELLEE, BOARD OF COMMISSIONERS
OF EVERGLADES DRAINAGE DISTRICT.**

This suit is brought against the Board of Commissioners of Everglades Drainage District, the Trustees of the Internal Improvement Fund of the State of Florida, the Treasurer of the State of Florida, and the taxing officials (Clerks, Tax Assessors and Tax Collectors) of each of the several counties of the State of Florida in which the lands comprising the Everglades Drainage District are located (R. 1-2). The matters alleged in the original Bill of Com-

plaint, the Supplemental Bill of Complaint, and the Second Supplemental Bill of Complaint, affecting each of the foregoing defendants or groups of defendants are diverse and separate in many particulars. This separate brief is therefore filed on behalf of the defendant, Board of Commissioners of Everglades Drainage District. Certain contentions insisted upon by Appellants, which primarily involve the Trustees of the Internal Improvement Fund, will not be argued at length here for the reason that they probably will be fully answered in a separate brief of said Trustees. Certain contentions herein considered may not be argued in the separate brief of the Trustees. Failure to argue any such contentions herein results from an effort to avoid duplications in the separate briefs as far as possible, and should not be construed as an admission of any sort.

OPINIONS BELOW

The official report of the opinion delivered in the Court below from which this appeal is taken is set forth in 24 F. Supp. 458. An earlier opinion—delivered prior to the filing of the Second Supplemental Bill of Complaint herein—is reported in 57 F. (2d.) 1048.

JURISDICTION

The grounds upon which jurisdiction herein, and the exercise of such jurisdiction, are opposed are set forth hereinafter in the Argument at length. Concisely stated: the bar of the Eleventh Amendment to the Constitution of the United States is asserted and relied upon, it is further insisted that the Appellants have an adequate remedy at law, and that the matters and things set out in the various Bills of Complaint herein are not such as to move the Court

to exercise its equity jurisdiction even if it had such jurisdiction.

STATEMENT

To clarify the issues here involved and the positions of the parties, some further analysis of the pleadings should be added to the Statement of the Case made by the Appellants.

The original Bill of Complaint (R. 1-54), filed May 19, 1931, set up the Acts of the Florida legislature (enacted during the period beginning in 1913 and ending in 1925) under which the bonds of the Everglades Drainage District were authorized to be issued and were issued (R. 1-31). That bill then attacks Chapter 13633, Acts of 1929 (which revised the acreage tax rates in the District) as a reduction of the acreage tax alleged to have been pledged to the payment of the bonds (R. 31-33), and Chapter 13,711, Acts of 1929, (which set up Okeechobee Flood Control District) as a diversion of acreage tax (R. 33-35). It is alleged that the Trustees of the Internal Improvement Fund are required to bid in the lands sold at the annual tax sales, if there are no other bidders, and to pay taxes on such lands, but that no taxes are collected on said lands which the Trustees of the Internal Improvement Fund have so bought in, and that, omitting taxes on said lands, taxes are about to be assessed on the other lands in the District on the basis of the said 1929 Acts. (R. 39-40). The prayers of the bill seek an adjudication that the acreage taxes fixed by the Acts under which the bonds were authorized and issued are the taxes properly assessable and collectible, and enjoining the assessment and collection of acreage taxes at any lesser rate (R. 40-43). It is unnecessary to consider this Bill of Com-

4

plaint further since Chapter 13633, Acts of 1929, was revised by the subsequent Acts of 1931 and 1937 hereinafter mentioned, and Chapter 13,711, Acts of 1929, was thereafter expressly repealed by Chapter 16090, Acts of 1933.

The Supplemental Bill of Complaint (R. 55-68), filed July 4, 1931, attacked Chapter 14717, Acts of 1931, (enacted May 20, 1931) by which the acreage taxes were revised, and prayed (in addition to the prayers contained in the original bill) that it be adjudged that certain portions of that Act impaired the obligation of the bonds. It further prayed for an adjudication: that the Trustees of the Internal Improvement Fund were required to buy all property in the District which was sold for unpaid taxes, where there were no other bidders who bid the amount of the delinquent taxes; that said Trustees were required to pay cash for such property so bid off; and that the Trustees were required thereafter to pay annually the acreage taxes on such property so purchased by them (R. 64-72). The features of the 1931 Act which were complained of, other than those which involved the Trustees of the Internal Improvement Fund, were revised by the Act of 1937. We can therefore consider such allegations in connection with the Second Supplemental Bill of Complaint which deals with the 1937 Act.

It should here be pointed out that the only complaint here asserted which involves the Trustees of the Internal Improvement Fund is that set forth under Point Numbered 4, beginning on page 58, of Appellants' Brief in which they insist that the Trustees are obligated to purchase the lands in the District sold for defaulted taxes and to pay annually the acreage taxes assessed against such lands thereafter. All other grievances here asserted by Appellants arise under


the Act of 1937 and are set out in the Second Supplemental Bill of Complaint.

The Second Supplemental Bill of Complaint (R. 208-229), filed July 19, 1937, after the case had remained entirely dormant for more than four years, in paragraph numbered 1 repeated the allegations with respect to the duties and liabilities of the Trustees of the Internal Improvement Fund, and alleged that after the filing of the First Supplemental Bill a proceeding was had in the Supreme Court of the State of Florida as a result of which the acreage taxes thereafter assessed and collected were the correct and proper acreage taxes, namely those which were levied at the time when the bonds were authorized and issued, and it was further alleged that the tax assessors and collectors were performing their duties in respect of the assessment and collection of said acreage taxes (R. 209-211).

By paragraph numbered 2 of the Second Supplemental Bill, certain changes in parties, by reason of the death of certain parties and the election of new officials, were suggested (R. 211-212).

By paragraph numbered 3 of said Second Supplemental Bill, it was alleged that the Legislature of the State of Florida, in the year 1937, had passed an Act amending the Act of 1931, (said Act of 1937 being Chapter 17902) (R. 212-213). In paragraph numbered 4 of the Second Supplemental Bill, the Appellants set forth the particulars in which the Act of 1937 was alleged to violate the obligations of their bonds (R. 213-223).

Without any further allegations of fact, the Second Supplemental Bill proceeds with its prayers for relief (R. 223-229).



The first prayer is for the relief prayed in the Original and the First Supplemental Bill of complaint (R. 223). We have heretofore observed that the only relief prayed in those earlier bills which is still involved in the case is the relief sought against the Trustees of the Internal Improvement Fund with respect to the lands sold for defaulted taxes.

The prayers numbered 2, 14 and 15 are not material. Prayers numbered 3, 4 and 5 request an order enjoining the Board of Commissioners of Everglades Drainage District from transmitting tax lists to the tax assessors, and the tax assessors from entering upon their tax rolls, and the tax collectors from collecting, the acreage taxes upon the lands in the District, unless such taxes are at the rate and in the amounts levied and imposed upon said lands by the statutes under which the bonds of the District were authorized to be issued (viz., the rates fixed in the Act of 1925) (R. 224-225). Conversely prayer numbered 13 prays a mandatory injunction requiring the transmittal of the tax lists at the rate fixed in the Act of 1925 (R. 227-228).

It is then prayed that the Board of Commissioners be enjoined from compromising or adjusting or cancelling any acreage tax liens for prior years or extending the time for the redemption of any such taxes, which powers the Act of 1937 had purported to vest in said Board. (Prayers 6, 7, 8 and 9, (R. 225-226).

By prayer number 12, Appellants request an injunction against the acceptance of bonds or coupons in the redemption of lands sold for taxes (R. 227).

By prayers numbered 10 and 11 (R. 226-227) the Appellants request a declaratory adjudication that the Act of 1937 is void as against the bondholders and that the earlier acts under which the bonds were authorized to be

issued constitute a part of the obligation of the contract of the holders of said bonds.

Certain of these objectives are abandoned in the Appellants' Brief and more general language is there used. But briefly stated the contentions of the Appellants are that the subsequently enacted statutes impair the obligation of their contract in that:

(a) They reduce the acreage taxes levied for payment of the bonds from the rates fixed in the Act of 1925 to the rates fixed in the Act of 1937. (Appellants' Brief, 21-33);

(b) The Act of 1937 levies acreage taxes for the purpose of administration and maintenance which are asserted to be diversions of acreage taxes alleged to have been pledged by the earlier Acts to the payment of the bonds (Appellants' Brief, 33-55);

(c) They enable bonds and coupons to be used in the payment of acreage taxes in lieu of money (Appellants' Brief, 55-58); and

(d) They relieve the Trustees of the Internal Improvement Fund of the necessity of paying subsequent acreage taxes on the lands sold for non-payment of taxes and not purchased by other bidders (Appellants' Brief, 58-88).

For those reasons Appellants assert that a cause of action in equity is stated, and that the lower Court should not have dismissed the suit. An analysis of the reasons upon which that Court acted discloses the correctness of its conclusions.

ARGUMENT

L The Unconstitutionality of a State Statute Is Not of Itself Ground For Equitable Relief.

Even if the statutes here assailed impaired the obligation of the contract evidenced by the bonds here involved in all of the particulars above mentioned, it does not necessarily follow that a cause of action in equity has been stated.

We have pointed out that the Second Supplemental Bill alleges the passage of the 1937 Act and the particulars in which it is alleged to violate the obligation of the bondholders' contract, and is thus alleged to be unconstitutional. But there is no allegation that any action whatsoever is threatened or imminent in pursuance of that Act.

Thus the Second Supplemental Bill prays that the Board of Commissioners of Everglades Drainage District be enjoined from adjusting taxes for 1936 and prior years as authorized in the Act. But there is no allegation that any such compromise is pending, threatened, or even remotely contemplated by said Board of Commissioners. It is prayed that the Board of Commissioners and the Trustees of the Internal Improvement Fund be enjoined from making any settlements between themselves in the consummation of any debt refunding or adjustment plans negotiated by the Board of Commissioners, without any intimation that there are any debt refunding or adjustment plans negotiated or under consideration. The same bill prays that the Board of Commissioners be enjoined from cancelling acreage tax liens upon property in the Drainage District which belongs

to the United States Government without any allegation that any one is considering the cancellation of any such taxes or even that the United States Government owns any such land. Similarly as to the authorization contained in the 1937 Act by which bonds or coupons may be accepted instead of money in the redemption of lands sold for the non-payment of taxes, there is no allegation that such bonds or coupons are being accepted in redemption of such taxes or will be so accepted.

In all of these particulars there is no allegation other than that the Act authorizes these things to be done, and that the Act is therein unconstitutional, and that the Appellants pray an injunction against the doing of these particular things.

As is pointed out in 14 R.C.L. 321, injunctions are not issued for the prevention of wrong in the abstract or to prevent an injury which is not imminent and irreparable. The mere fact that the Act of 1937 may be unconstitutional is not of itself ground for equitable relief in the Courts of the United States.

Terrace vs. Thompson, 263 U. S. 197;

New Jersey vs. Sargent, 269 U. S. 328.

With respect to all of these matters where no action is required by the Act of the Board, including the acceptance of bonds in redemption of taxes, some allegation of threatened action or injury is essential in order that the bill should contain equity. This is true regardless of the merits as to the constitutionality of the legislative act.

2. The Right To The Relief Sought Against The Trustees of The Internal Improvement Fund Has Been Denied By The Supreme Court of Florida.

Dismissing the matter of the use of bonds to pay taxes, it is obvious that the gist of the relief here sought is: (a) to enjoin the Board of Commissioners of Everglades Drainage District and the taxing officials in that District from assessing and collecting the acreage taxes fixed by the Act of 1937 and at the same time requiring said Board to transmit to the taxing officials tax lists for 1937 and subsequent years at the rates and amounts fixed by the Act of 1925; and (b) requiring the Trustees of the Internal Improvement Fund to pay taxes on lands sold for non-payment of taxes and not purchased at such sale by other bidders.

The latter problem, i.e., the liability of the Trustees of the Internal Improvement Fund for taxes on lands sold for non-payment of taxes, was directly passed upon and determined contrary to the contention of the Appellants in the case of *State ex rel. Board of Commissioners v. Sholtz*, 112 Fla. 756, 150 So. 878. We insist that it was rightly so decided and that such decision is binding upon the Federal courts, but we shall not here argue the point at length, since it will be fully covered in the separate brief of said Trustees.

3. The Lower Court In Dismissing This Suit Pointed Out That The Appellants Had An Adequate Remedy at Law.

With respect to the remaining relief sought, i.e., the right of the Appellants to an injunction against the Board

of Commissioners of Everglades Drainage District and the various taxing officials in that District requiring acreage taxes at the rates fixed in the Act of 1925 and not at the rates fixed in the Act of 1937, we call attention to the decision of the Circuit Court of Appeals for the Fifth Circuit in the case of *Everglades Drainage District vs. Florida Ranch and Dairy Corporation*, 74 F. (2d) 914. That case was cited by the lower Court in its opinion and judgment denying the injunction here sought, and dismissing this suit (R.248).

In that case a suit in equity was brought by the Florida Ranch and Dairy Corporation against the same Board of Commissioners of Everglades Drainage District here involved in the United States District Court for the Southern District of Florida for the purpose of enjoining that Board from transmitting to the Tax Assessors of the various Counties within the District the tax lists at the rates prescribed by the Act of 1925 and for the purpose of enjoining them from transmitting any such lists except at the rates prescribed by the Act of 1923, the bill of complaint alleging that the Act of 1923 provided a higher rate of taxation and that the reduction of rate of taxation by the 1925 Act, in producing less revenue for the payment of bonds, impaired the obligation of the contract of the plaintiff as a holder of bonds of the District.

In reversing the decree of the District Court, which had entered a decree for the Plaintiff, the Circuit Court of Appeals for the Fifth Circuit said (p. 917-918):

"Plaintiff alleges that because of the changes made in 1925 less revenue will be realized. Whether that prophecy be true or not necessarily rests on opinion evidence, which in the nature of things

would be so insubstantial as to be of no probative value. But in our opinion plaintiff has the right to show if it can that the reduction of taxes in the largest zone containing 2,000,000 acres, upon which the taxes have been decreased some \$85,000 per annum by the act of 1925, impairs the obligation of its contract as a bondholder. Mandatory injunction is not directly prayed for by the bill but if it is inferentially, or if the bill could be cured in that respect by amendment, yet, as it appears to us, mandatory injunction to restore the higher taxes levied by the 1923 act should not, in the exercise of a sound discretion, be issued. Plaintiff has an adequate remedy at law by first reducing the amount due on its bonds to judgment, and then, if necessary in aid of such judgment, by proceeding by mandamus to seek the restoration of the levy authorized by the 1923 Act on the lands in the largest zone containing 2,000,000 acres of border lands. This being so, plaintiff is not entitled to proceed in equity for relief by injunction. 14 R.C.L. 317, 341.

"The decree is reversed, with directions to dismiss the bill of complaint without prejudice to the right of the plaintiff to proceed in an action at law and seek therein to compel the restoration of taxes as levied by Chapter 9119, Acts of 1923, wherever such taxes have been reduced under the provisions of Chapter 10026, Acts of 1925."

That case is decisive of the rights of the Appellants here asserted. Where in that case it was alleged that the taxes fixed by the Act of 1923 had been reduced by the

Act of 1925, it is here alleged that the taxes fixed by the Act of 1925 have been reduced by the Act of 1937. In each instance it is asserted that the later Act impaired the obligation of the contract under which the bonds were issued. In each instance an adequate remedy at law is available. We agree with the lower Court in its view as to the conclusiveness of that decision (R. 248), but we shall now discuss other citations demonstrating the soundness of that decision.

4. Having An Adequate Remedy At Law The Appellants Are Not Entitled To Proceed In Equity.

Title 28, U.S.C.A., Section 384 provides: "Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate and complete remedy may be had at law."

It affirmatively appears from the Appellants' contract with the District that they have an adequate remedy by mandamus to enforce a full compliance with all the provisions thereof. Section 23 of the Act under which these bonds were issued (Section 23 of Chapter 6456, Acts of 1913, appearing as Section 1557, Compiled General Laws of 1927) provides in part as follows:

"Any holder of any of said bonds or coupons may either at law or in equity by suit, action or mandamus enforce and compel the performance of the duties required by this Article of any of the officers or persons mentioned in this Article in relation to the said bonds, or to the collection, enforcement and application of the taxes for the payment thereof; Provided, however, that no obliga-

tion authorized by this Article shall be construed as an obligation of this State, but only as the obligation of the drainage district herein created."

In the case of *Walkley v. City of Muscatine*, 6 Wall. 481, 18 L. Ed. 930, the court said:

"We are of opinion the complainant has mistaken the appropriate remedy in the case, which was by writ of mandamus from the Circuit Court in which the judgment was rendered against the defendants. The writ affords a full and adequate remedy at law. There are numerous recent cases in this Court on the subject.

"We have been furnished with no authority for the substitution of a bill in equity and injunction for the writ of mandamus. An injunction is generally a preventive, not an affirmative remedy. It is sometimes used in the latter character, but this is in cases where it is used by the court to carry into effect its own decrees—as in putting the purchaser under a decree of foreclosure of a mortgage into the possession of the premises."

In the case of *Coquard v. Indian Grave Drainage Dist.* (C.C.A. 7), 69 F. 867, suit was brought to enjoin the commissioners of the named drainage district from receiving bond coupons in payment of assessments. The Court there said:

"Was the appellant entitled to the injunction which he asked against the further acceptance of coupons in discharge of taxes levied for the pay-

ment of interest on the second assessment? On behalf of the appellees it is contended that the proper remedy, if the appellant is entitled to relief, is by mandamus to compel the collection under the law, and payment of the amount due him, as if the compromise agreement had not been made. We concur in that view. *** In so far as it interferes with the appellant's right to have levies made and enforced in the manner provided by law, it is, as we assume, illegal. But it does not follow that an injunction is necessary. Mandamus, it is conceded, is the proper remedy to enforce the collection of taxes; and, if proper levies of taxes are not made, mandamus, it is well settled, is the means of relief. *Walkley v. Muscatine*, 6 Wall. 481; *Heine v. Board*, 19 Wall. 655; *Barkley v. Commissioners*, 93 U.S. 258; *Chicago, D. & V. R. Co. v. Town of St. Anne*, 101 Ill. 151; *East St. Louis v. Underwood*, 105 Ill. 308; 2 Dill. Mun. Corp. Sec. 855."

An extensive note upon this subject is to be found in 93 A.L.R., at pages 1495-1505, where it is laid down as a well settled general principle that a suit for injunction may not be maintained where there is a remedy by mandamus, and where numerous cases are cited.

It is true that by Rule 81(b) of the Federal Rules of Civil Procedure mandamus has been abolished, but it is there provided that "Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules."

In *Pape v. St. Lucie Inlet Dist. and Port Authority*, (C.C.A. 5) 75 F. (2d) 865, where an attempt was made to

obtain a decree adjudging that certain bonds first issued had priority of payment out of taxes of the named district over bonds subsequently issued, and where a mandatory injunction enforcing such adjudication was sought, the Court said:

"It is perfectly plain, however, that plaintiff's bill does not state a case for the exercise of the equity jurisdiction, because plaintiff has an adequate remedy at law by mandamus, *Walkley v. City of Muscatine*, 6 Wall. 481, 18 L.Ed. 930; *Fineran v. Bailey* (C.C.A.) 2 F.(2) 363; *Everglades Drainage District v. Florida Ranch & Dairy Corp.*, 74 F.(2d) 914; *Safe Deposit & Trust Co. v. City of Anniston* (C.C.) 96 F. 661; *Coquard v. Indian Grave Drainage District* (C.C.A.) 69 F. 867; *Virginia v. West Virginia*, 246 U.S. 565, 38 S.Ct. 400, 62 L.Ed. 883; *State of Oregon v. Slusher*, 114 Or. 498, 244 P. 540, 58 A.L.R. 114, and Note p. 117; *State ex rel. Havana State Bank v. Rodes* (Fla.) 157 So. 33; *Humphreys v. State*, 108 Fla. 92, 145 So. 858, and because, considered on its merits, the bill is without equity."

Continuing the Court said:

"Federal equity jurisdiction will not be exerted to interfere in matters involving the fiscal or public affairs of a state or its subdivisions, without a substantial showing of the existence of a right, and a really threatened and irreparable injury to it demanding the protection of a federal equity court. *Commonwealth of Pa. v. Williams*, Feb. 4, 1935 (U.S.) 55 S.Ct. 380, 79 L.Ed. ____; *Harrisonville*

v. W. S. Dickey Clay Mfg. Co., 289 U. S. 334, 53 S.Ct. 602, 77 L.Ed. 1208; Fenner vs. Boykin, 271 U.S. 240, 46 S.Ct. 492, 70 L.Ed. 927; Central Ky. Natural Gas Co. v. R.R. Comm., 290 U.S. 264, 54 S.Ct. 154, 78 L.Ed. 307; Matthews v. Rodgers, 284 U.S. 521, 52 S.Ct. 217, 76 L.Ed. 447; Stratton v. St. L. S. W. R. Co., 284 U.S. 530, 531, 52 S.Ct. 222, 76 L.Ed. 465; Yarnell v. Hillsborough Pkg. Co. (C.C. A.) 70 F. (2d) 435; Boise Artesian Hot & Cold Water Co., v Boise City, 213 U.S. 276, 29 S.Ct. 426, 53 L.Ed. 796; Northport Co. v. Hartley, 283 U.S. 568, 51 S.Ct. 581, 75 L.Ed. 1275; c/f Amazon Petroleum Corp. v. R.R. Comm. (D.C.) 5 F. Supp. 639."

5. Under The Eleventh Amendment To The Constitution of the United States the Court Had No Jurisdiction To Entertain This Suit.

In the original Bill of Complaint the jurisdiction of the Court was invoked by reason of diversity of citizenship (R. 2-3). So far as the Trustees of the Internal Improvement Fund are concerned there is no other ground of jurisdiction. As we have above pointed out the relief sought and insisted upon here against the Trustees of the Internal Improvement Fund is a mandatory injunction requiring them to pay to the Board of Commissioners of Everglades Drainage District the subsequent drainage taxes due upon all lands bid off to said Trustees. In the event of the failure of said Trustees to pay the amounts so due, the Appellants pray that said Trustees be required to give a true accounting of all property owned or controlled by them, and all sums of money due or that may become due to them. (R. 66-67).

The right to require the Trustees to pay these subsequent acreage taxes on the lands sold for defaulted taxes is asserted under the Acts in pursuance of which the bonds were issued, viz., the Acts as they existed in the year 1925, and not under the subsequent Acts of 1929, 1931 and 1937 here assailed as unconstitutional.

In other words, the relief sought against the Trustees is affirmative relief which the Appellants assert they are entitled to under an Act upon which they rely and which they do not allege to be unconstitutional.

In their brief (p. 86-87) they assert that this suit can be maintained against the Trustees because "public officials cannot claim exemption from suit while acting under an unconstitutional statute". We have no quarrel with the law there asserted or the cases there cited. That law has no application to the situation here involved. We quote from *Hopkins v. Clemson Agricultural College*, 221 U.S. 636, the first case so cited by them, the following:

"No suit, therefore, can be maintained against a public officer which seeks to compel him to exercise the State's power of taxation; or to pay out its money in his possession on the State's obligations; or to execute a contract; or to do any affirmative act which affects the State's political or property rights. *Cunningham v. Macon & Brunswick R.R.*, 109 U. S. 446; *North Carolina v. Temple*, 134 U.S. 22; *Louisiana v. Steele*, 134 U.S. 230; *Louisiana v. Jumel*, 107 U.S. 711; *Pennoyer v. McConnaughy*, 140 U.S. 1; *In re Ayers*, 123 U.S. 443; *Hans v. Louisiana*, 134 U.S. 1; *Harkrader v. Wadley*, 172 U.S. 148; *Hagood v. Southern*, 117 U.S. 52, 70."

The suit here is for affirmative relief under a statute the constitutionality of which is unquestioned. It seeks to compel the Trustees to do affirmative acts which affect the State's property rights.

Again, the Appellants insist that there is express consent that the Trustees may be sued (Appellants' Brief 87). But where the right to maintain the suit is based upon diversity of citizenship, no consent by the State to submit itself to suit can supply the necessary diversity of citizenship, for the State is not a citizen.

State Highway Commission of Wyoming vs. Utah Construction Company, 278 U.S. 194, 199;

Postal Telegraph Cable Company vs. Alabama, 155 U.S. 482, 487;

Minnesota vs. Northern Securities Company, 194 U.S. 48, 63.

This Court has recognized that the Trustees of the Internal Improvement Fund of the State of Florida are merely agents for the State vested with the legal title to lands owned by the State for the purpose of more convenient handling of said lands, and that the State of Florida remains the beneficial owner of the lands.

State of Florida v. Anderson, 91 U. S. 667, 670, 676.

The functions and attributes of the Trustees of the Internal Improvement Fund are discussed in greater detail in their separate brief. Those Trustees are "the arm or alter ego" of the State. The relief sought is not to enjoin the Trustees under an unconstitutional act, but to require

them affirmatively to pay money and to account for their property, all of which they hold in trust for the State of Florida, under a constitutional act. This is undoubtedly a suit against the State of Florida.

Whether it is possible to maintain this suit against the Board of Commissioners of the Everglades Drainage District, as being also a State agency, it is unnecessary to consider. In a suit to enjoin that Board from issuing additional bonds under an Act of 1927 (subsequently repealed), the District Court For the Northern District of Florida in the case of *Rorick vs. Board of Commissioners of Everglades Drainage District*, 27 F. (2nd) 377, declared that a suit against that Board was not a suit against the State, and that they could be enjoined as State officers from acting, in issuing the additional bonds, under the unconstitutional Act of 1927. At the same time it was pointed out that the Supreme Court of Florida in the case of *Martin vs. Dade Muck Land Company*, 95 Fla. 530, 116 So. 449, had declared that the Everglades Drainage District was a State agency and a statutory subdivision of the State for special governmental purposes. It should also be borne in mind here that part of the relief asked against the Board of Commissioners of the Drainage District is a mandatory injunction commanding them to transmit tax lists at the rates specified by the Acts in effect in 1925, which Acts the Appellants rely upon and do not assert to be unconstitutional.

We submit that the Eleventh Amendment to the Constitution of the United States, reading as follows:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the

United States by citizens of another State, or by citizens or subjects of any foreign State."

is a bar to the prosecution of this suit.

6. Chapter 6456, Laws of Florida, 1913, is a Constituent Part of Appellants' Bond Contract.

We come now to the consideration of the merits of the Appellants' case.

Everglades Drainage District was created by Chapter 6456, Acts of 1913. Mr. Justice Strum, in delivering the opinion of the three-judge court, rendered on April 13, 1932, and reported in 57 Fed. (2d) 1048, stated that:

"Legislation by authority of which bonds are issued, and their payment provided for becomes a constituent part of the contract with the bondholders. *** "

The Federal Supreme Court, in considering a contract arising from a state law, will treat it as if there was embodied in its text the settled rule of law which existed in the state at the time the state action relied upon as a contract was taken.

Ennis Water Works v. Ennis, 233 U. S. 652,

Inasmuch, therefore, as Chapter 6456, *supra*, constitutes the initial legislation, by authority of which the bonds owned by appellants were issued, that Chapter must of necessity be a constituent part of the contract with the bondholders.

7. The Statute in Question Must be Construed so as to Give Effect to the Legislative Intent.

The argument of appellants, that the proceeds of the statutory tax is exclusively pledged to the bondholders, is based upon the technical rules of statutory construction that where different parts of a statute are conflicting, the last in order of arrangement and the most specific and particular parts of the statute prevail.

But in construing a statute in Florida, the primary object is to discover, disclose and fix the true legislative intent. See

State v. DeWitt C. Jones Co., 108 Fla. 613, 147 So. 230; 59 C. J. 943.

In the case of *State of Florida v. Sullivan*, 95 Fla. 191, 207; 116 So. 255, the Court said:

"In statutory construction legislative intent is the pole star by which we must be guided, and this intent must be given effect even though it may appear to contradict the strict letter of the statute and well-settled canons of construction. The primary purpose designated should determine the force and effect of the words used in the Act, and no literal interpretation should be given that lends to an unreasonable or ridiculous conclusion or a purpose not designated by the lawmakers."

In the case of *Realty Bond & Share Co. v. Englar*, 104 Fla. 329, 336, 337; 143 So. 152, the Court said:

"the intent of a statute is the vital part, and the primary rule of construction is to ascertain and give effect to that intent, and the entire statute should be construed and effect given to every part thereof, if it is reasonably possible to do so."

Construing the statutes according to the primary and governing rules above stated, it must be concluded that proceeds of the acreage tax may be used to pay reasonable expenses of the Board of Commissioners necessarily incurred as we shall now demonstrate.

8. **The Proceeds of the Acreage Taxes are Statutory Funds which, Among Other Purposes, are Expressly Appropriated to the Payment of Expenses Incurred by the District.**

The purpose of the creation of the District is stated in Section 1 of Chapter 6456, Laws of 1913, as follows:

"That for the purpose of draining and reclaiming the lands hereinafter described and protecting the same from the effects of water, for agricultural and sanitary purposes, and for the public convenience and welfare, and for the public utility and benefit, a drainage district is hereby established to be known and designated as the Everglades Drainage District, * * *"

Sections 2, 3 and 4 of said Chapter provide for the creation of a Board of Commissioners of said District and prescribe the general powers and rights of the Board.

The only tax levied or imposed by this Act is an acreage tax, which, by Section 5 thereof, is declared to be:

"For the purpose of constructing, completing and maintaining the works of drainage and reclamation hereby authorized for the benefit and protection of the lands in said district, * * *"

It should be noted that no reference is made to the fact that the annual assessment of taxes levied and imposed thereby are for the purpose, exclusive or otherwise, of paying bondholders.

The disposition of the proceeds arising from said acreage tax is provided for by Section 6 of said Chapter 6456, which Section, in its entirety, is as follows:

"The proceeds arising from the acreage tax levied by this Act shall be used by the said Board in the construction and maintenance of such canals, drains, levees, dikes, dams, reservoirs, sluices, revetments and other works and improvements as the said Board may deem necessary or advisable to drain and reclaim the lands in said district, and to the continuation of the construction of such canals, dams, locks, levees, and reservoirs as are now in process of construction within said drainage district, and to the purchase of lands or personal property as the Board may deem necessary to carry out the purposes of this Act, and to the expenses of the Board in the conduct of said work and its business generally, and to repay any loans and the interest thereon, and to the creation of a sinking fund for the retirement of the principal of the

bonds that the Board may issue under the provisions of this Act, and to the payment of the interest thereon."

This Section 6 has been in force and effect ever since the District was created. From the time of the organization of the District, until 1921, when a one mill ad valorem tax was imposed by Chapter 8412, Laws of Florida, 1921, the acreage tax provided for by Chapter 6456, supra, was the only tax imposed upon lands of the District, and the proceeds of that acreage tax were the only source available for the purpose of paying the expenses of the Board in the conduct of the work provided for by Section 6 and its business generally.

Sections 7 to 18, inclusive, of Chapter 6456, supra, set forth the provisions for the levying and collection of acreage taxes within the District.

Sections 19 to 23, inclusive, authorize and empower the Board of Commissioners of Everglades Drainage District to borrow money on permanent loans and incur obligations from time to time in the manner specifically thereby provided for.

Section 24 of said Chapter provides as follows:

"It shall be the duty of the State Treasurer or his successor in office, as custodian of the funds belonging to the said Board of Commissioners and to the said Drainage District, out of the proceeds of the taxes levied and imposed by this Act and out of any other moneys in his possession belonging to the said Board or to the said Drainage District, which moneys so far as necessary are hereby set apart and appropriated for the purpose.

to apply said moneys and to pay the interest upon the said bonds as the same shall fall due and at the maturity of the said bonds out of the said moneys to pay the principal thereof, and there shall be and there is hereby created a sinking fund for the payment of the principal of the said bonds, and the said Board shall set apart and pay into such sinking fund annually out of the taxes levied and imposed by this Act, and the other revenue and funds of the said District, at least two per cent. of the amount of bonds outstanding. The said sinking fund for the payment of the principal of said bonds shall not be appropriated to any other purpose than that herein specified."

Section 25 of said Chapter provides for the investment of the sinking fund provided for by Section 24. The remaining Sections of said Chapter are, we believe, immaterial to this cause.

The inference which must be drawn from the provisions of Section 5 and 6 of Chapter 6456, *supra*, is that the proceeds arising from the acreage tax levied by said Chapter shall be used:

(a) As provided in Section 5: "For the purpose of constructing, completing and maintaining the works of drainage and reclamation hereby authorized";

(b) As provided in Section 6: "In the construction and maintenance of such canals, drains, levees, dikes, dams, reservoirs, sluices, revetments and other works and improvements as the Board may deem necessary or advisable";

(c) As provided in Section 6: "To the continuation of the construction of such canals," etc.; and

(d) As provided in Section 6: "To the expenses of the Board in the conduct of said work and its business generally,".

as well as to the repayment of loans and interest thereon and the creation of a sinking fund.

Appellants argue on authority of *Rorick vs. Board of Commissioners*, 57 Fed. (2d) 1048 (Brief of Appellants 39), that the provisions of Chapter 6456, supra, authorizing use of proceeds of Drainage District taxes to pay general expenses did not authorize such use to the prejudice of the rights of the bondholders to have such proceeds applied exclusively to the payment of bonds and the interest thereon. That case was decided on April 13, 1932.

Thereafter, on November 17, 1933, the Supreme Court of the State of Florida, in the case of *State ex rel. Sherrill vs. Milam*, 113 Fla. 491, 153 So. 125, in considering the ability of the Board of Commissioners of Everglades Drainage District to obtain funds for the purpose of paying the expenses involved in levying taxes within that District, held that originally the Board of Commissioners had had authority to borrow money temporarily, for emergencies, and that provisions for the payment of those temporary loans, and for the payment of the general expenses of the Board of Commissioners from acreage taxes, were in force and in effect at the time that the Everglades Drainage District was created and were then still in effect.

The following is the language of the Court appearing in that opinion (153 So., Text 131):

"It appears to have been the intention of the lawmakers that, if funds were necessary to take care of any of these preliminary steps for getting the acreage taxes properly on the tax rolls, they could be raised through temporary loans. Section 18 of Chapter 6456, *supra*, provided as follows:

"The said Board is hereby authorized and empowered *in order to provide for the work described in this Act to be performed, to borrow money temporarily from time to time for a period not exceeding one year at any one time and to issue its promissory notes therefor,* etc. (Italics supplied).

The same provision is brought forward as section 1177, Revised General Statutes of Florida (now Comp. Gen. Laws 1927, Sec. 1552).

Section 6, of chapter 6456 (Comp. Gen. Laws, 1927, Sec. 1535), the Everglades Drainage District Act, provides that among other uses to be made of the acreage tax levied by the act, the board might use it to purchase 'lands or personal property as the Board may deem necessary to carry out the purposes of this Act, *and to the expenses of the Board in the conduct of said work and its business generally, and to repay any loans and the interest thereon,* etc.

In other words, while there were no funds on hand, for the starting of the machinery of the Everglades Drainage District, the board of commissioners of Everglades drainage district were given a credit, by being empowered to borrow money temporarily, for emergencies, so to speak, and these loans were backed by, and to be paid from, the proceeds of acreage taxes collected after the prep-

aration of tax lists, the entry thereof on the tax roll of the several counties and the taxes collected.

*These provisions for 'temporary loans,' for the payment thereof, and for the payment of the general expense of the board of commissioners, from the taxes, are still in effect. See Sections 1165 and 1177, Revised General Statutes of Florida, sections 1535 and 1552, Compiled General Laws of Florida. * * **

(Emphasis in the foregoing quotation is supplied by the Court, except in the last paragraph thereof, where emphasis was supplied by briefer).

This decision by the Supreme Court of Florida, the Court of last resort in that State, clearly is contrary in effect to the decision rendered by the three-judge court in the case at bar as reported in 57 Fed. (2d), supra.

The three-judge court, which later considered the instant case, and whose opinion is set forth in 24 Fed. Supp., at Page 458, must have considered that the Supreme Court of Florida had passed upon this point and decided it adverse to appellants herein, for in that case, the Court said:

"From an examination of the cases of *Martin v. Dade Muck Land Company*, 95 Fla. 530, 116 So. 449; *State ex rel. Sherrill v. Milam, et al.*, 113 Fla. 491, 153 So. 100, 125, 136; *State ex rel. Board of Commissioners of Everglades Drainage District v. Sholtz*, 112 Fla. 756, 150 So. 878; *Everglades Drainage District, et al. v. Florida Ranch & Dairy Corporation*, 5 Cir., 74 F. 2d 914, it appears that the Supreme Court of Florida has passed upon the

questions presented to this court adverse to plaintiff, and notwithstanding the decision in the Rorick case, *Rorick v. Board of Com'rs.*, 57 F. 2d 1048, this court is bound by the construction placed upon these statutes by the highest court of the state. *Erie Railroad Company v. Harry J. Tompkins*, 58 S. Ct. 817, 82 L. Ed. 1188." (Emphasis supplied)

That reference to the case of *State ex rel. Sherrill v. Milam*, 153 So. 125, *supra*, shows that the lower Court, in the case at bar, was of the opinion that the Supreme Court of Florida had, in that case, passed upon the question here under discussion adverse to plaintiff, and notwithstanding the earlier opinion herein. The reason for that conclusion is that in the case of *Sherrill, et al. vs. Milam*, *supra*, the Court dealt primarily with the question of the right of the Board of Commissioners to use the proceeds of acreage taxes for expenses of operation in connection with making up tax lists in accordance with statutory requirements, and, so far as we can see, with no other point relevant to the instant case. At that time they were in default as to principal and interest in a sum far in excess of the annual acreage tax. The ability of the Board of Commissioners to comply with the mandate of the writ requiring it to make up the tax lists was shown to depend upon its ability to raise funds to comply therewith. The Supreme Court of Florida held as above shown that the Act creating the District gave the Board of Commissioners ample power to raise such funds, and that they still had these powers.

The Supreme Court of Florida, in a case decided as late as the 31st day of October, 1938, re-affirmed its position that the proceeds of tax collections under the original Everglades Drainage Act are statutory funds which are

expressly appropriated "to the payment of bonds issued and other authorized expenses incurred by the District". (Emphasis supplied).

In that case, *State ex rel. Yonge vs. Franklin et al*, —Fla.—, 184 So. 237, in ruling on the sufficiency of petitions for alternative writs of mandamus filed in that Court by certain persons seeking to have the Court issue writs directing the Board of Commissioners of Everglades Drainage District to pay certain sums to relators therein for legal services rendered, the Court declared:

"* * * the proceeds of tax collections from which the payments are commanded to be made, are statutory funds which are expressly appropriated to the payment of bonds issued *and other authorized expenses incurred by the District*; and while the statute contemplates the payment of all proper expenses in executing the purposes of trust, yet there is no express appropriation to pay any class of such expenses; and being trust funds, payments therefrom not covered by commands of the statute are to be enforced by courts of equity ***". (Emphasis supplied).

In support of their contention that Section 6456, *supra*, and particularly Section 24 thereof, makes an exclusive appropriation of the acreage taxes for the payment of bonds, which is a part of an irrevocable contract with the bondholders, Appellants cited, in addition to the *Rorick* case above referred to, the case of *Lainhart v. Catts*, 73 Fla. 735, 75 So. 47; and *Bannerman v. Catts*, 80 Fla. 170, 85 So. 336.

However, in those cited cases it was not held by the Supreme Court of Florida that the appropriation made by

Chapter 6456 was for the purpose of creating the sinking fund only; the holding was that the appropriation was for the purposes specified in Sections 6, 24 and 25. The language of the opinion in the Lainhart case upon this point is as follows:

"The money raised by the special assessment is not paid into the general treasury of the state, but is a special fund, placed in the custody of the state treasurer to be expended for certain specified purposes designated by the act, as in sections 6, 24 and 25.

The revenue raised by virtue of the act, is to be used for the purpose of draining and reclaiming the land in the drainage district in order to render the same more susceptible to cultivation, more habitable and more sanitary, in the interest of the public health, benefit and welfare, as plainly stated in the act. * * *

It seems clear from the acts under consideration that the Legislature intended to, and did appropriate the revenues derived from the special assessment to carry out the very purpose of the acts. * * * "

The holding in the Lainhart case upon this point was followed in the later case of *Bannerman v. Catts*, above cited.

9. **Judicial Constructions That Payment of the Expenses of the Board May be Made From the Acreage Taxes Collected do not Impair Appellants' Contract.**

The provision in the Act for the payment of the expenses of the Board in its business generally was not an "impairment" in the constitutional connotation. In the case of *Long Sault Development Company vs. Call*, 242 U. S. 272; it was said by the Court, speaking through Mr. Justice Clarke:

"***the provisions of the Constitution of the United States for the protection of contract rights are directed only against the impairment of them by constitutions or laws adopted or passed subsequent to the date of the contract *** and do not reach decisions of courts construing constitutions or laws which were in effect when the contract was entered into, as has been held by a long line of decisions, extending from *Knox v. Exchange Bank*, 12 Wall. 379, to *Cross Lake Shooting and Fishing Club v. State of Louisiana*, 224 U. S. 632." (Emphasis supplied).

In the case of *Cross Lake Shooting and Fishing Club v. Louisiana*, 224 U. S. 632, last mentioned, Mr. Justice Van Devanter, speaking for the Court, unequivocally declared:

"***the Constitution *** declares, 'No state shall *** pass any *** law impairing the obligation of contracts.' This clause, as its terms disclose, is not directed against all impairment of contract obligations, but only against such as results from a subsequent exertion of the legislative power of the state. It does not reach mere errors committed by a state court when passing upon the validity or effect of a contract under the laws in existence when it was made." (Emphasis supplied).

Thus the decisions of the Florida Supreme Court in the cases of *State ex rel. Sherrill v. Milam*, supra, and *State ex rel. Yonge v. Franklin*, supra, construing the Act under which the Appellants' bonds were issued to authorize the use of acreage taxes assessed by the Act for the purpose of paying expenses of the operation of the District do not constitute an impairment of the obligation of Appellants' contract.

10. The Provisions of Subsequent Acts Levying Additional Taxes for the Payment of the Expenses of the Board Are Not Invalid.

Even if the acreage taxes assessed by the Act of 1913 were appropriated exclusively to the payment of the bonds that would not prevent the levying of additional taxes for the purpose of paying operating expenses by subsequent Acts of the Legislature.

That fact was recognized in the opinion of the lower Court in the first opinion in this case (*Rorick vs. Board of Commissioners of Everglades Drainage District*, 57 Fed. (2d) 1048). Mr. Justice Strum, delivering the opinion of the Court, after declaring that the acreage taxes were pledged exclusively to the payment of bonds and interest, if necessary, said (Text 1056) (R. 94, 96):

"If, as urged by the board, it (the Board) would by this holding be left without adequate operating or maintenance revenue, the situation may be met by further exertion of the taxing power to provide the same."

To the same effect was the decision in the case of *Knott vs. United States ex rel. Rorick*, 69 Fed. (2d) 708. In that case, Mr. Justice Walker, in delivering the opinion of the Court, said:

"To another provision of that act (section 24) in reference to the application by the state treasurer, as the Custodian of the funds belonging to said board of commissioners, of proceeds of the above-mentioned taxes to the payment of matured principal and interest of such bonds, counsel for the appellees attribute the effect of requiring such application for the purpose of paying matured principal and interest of bonds as to which such application is sought, though a result of such application is to exhaust the funds mentioned, leaving no part thereof to be applied to the payment of necessary expenses of maintaining the drainage works constructed or of the matured principal or interest of the bonds equally entitled to payment. *Rorick v. Board of Commissioners of Everglades Drainage District* (D. C.) 57 F. (2d) 1048, 1056. *No such contention was made, or reasonably could be made, with reference to the proceeds of an annual ad valorem tax which, by an act passed in the year 1921 (Laws of Florida, 1921, c. 8412), was levied and assessed on all real, personal, and mixed property in said Everglades Drainage District, to be 'known as a maintenance tax and shall be used for maintenance, repairs, upkeep, and any other general or necessary purpose of the District.' Section 1. A result of that act was that appellant became the custodian of funds of the Everglades Drainage*

District which the appellees had no right to have applied to the payment of bonds and coupons issued by that district which were held by them." (Emphasis supplied).

Appellants recognize that such authority is vested in the Legislature and so admit on Page 41 of their brief, where the following language is used:

"The Legislature has ample power to levy, when necessary, additional taxes for payment of operating expenses."

Appellants cannot interfere with and control the Acts of the Legislature of the State of Florida in levying a tax for the maintenance and operation of Everglades Drainage District. Even if it be conceded that appellants are entitled to a levy of the acreage taxes in effect at the time their bonds were authorized to be issued, still they have no authority, by obtaining judicial decrees or otherwise, to exercise or usurp the taxing power of the Legislature of the State of Florida. The taxing power is a legislative power, and can only be exercised under and by virtue of that power, and by the particular officers and in the particular manner provided for by the Legislature.

This Court stated the law on that point in the early case of *Heine v. Board of Levee Comrs.*, 19 Wall. 655, 22 Law Ed. 223. There it was said:

"The power we are here asked to exercise is the very delicate one of taxation. This power belongs in this country to the legislative sovereignty, State or National. In the case before us the Na-

tional sovereignty has nothing to do with it. The power must be derived from the Legislature of the State."

In the case of *Rees vs. City of Watertown*, 19 Wallace 107, 22 Law. Ed. 72, this Court said:

"***We are of the opinion that this court has not the power to direct a tax to be levied for the payment of these judgments. This power to impose burdens and raise money is the highest attribute of sovereignty, and is exercised, first, to raise money for public purposes only; and, second, by the power of legislative authority only. It is a power that has not been extended to the judiciary. Especially is it beyond the power of the Federal judiciary to assume the place of a State in the exercise of this authority at once so delicate and so important.***

In that same case the Court made the following observation which is peculiarly applicable to the instant case:

"***The remedies for the collection of a debt are essential parts of the contract of indebtedness, and those in existence at the time it is incurred must be substantially preserved to the creditor. Thus a statute prohibiting the exercise of its taxing power by the city to raise money for the payment of these bonds would be void. But it is otherwise of statutes which are in existence at the time the debt is contracted. Of these the creditor must take notice, and if all the remedies are preserved to him which were in existence when his

debt was contracted he has no cause of complaint."***

The necessity of funds for additional maintenance and operating expenses in the District was recognized by the Legislature of Florida in 1921. At that time, Chapter 8412, Laws of Florida, 1921, was adopted. That Act provides:

"Section 1. That there is hereby levied and assessed on all real, personal and mixed property in the Everglades Drainage District of Florida, including the lands held by the Trustees of the Internal Improvement Fund for the State of Florida, annually, beginning with and including the year 1921 a tax of one mill on each one dollar of valuation, and the said tax to be known as a maintenance tax and shall be used for maintenance, repairs, upkeep, and any other general or necessary purpose of the District."

Thereafter, in 1937, the Legislature of Florida, again recognizing the needs of the District, enacted into law Chapter 17902, Laws of Florida, 1937, which was an Act amending Chapter 14717, Acts of Florida, 1931. By Chapter 17902, supra, and particularly Section 4 thereof, it was provided:

"That for the purpose of paying the cost of administering the affairs of the said District generally,"

there was levied and imposed on lands within Everglades Drainage District, a special tax or assessment in the form of an acreage tax.

The first of these taxes levied was an "ad valorem" tax, the second an "acreage" tax. However, this is of no consequence for in the case of *Knott v. U. S. ex rel Rorick*, 69 Fed. (2d) 708, at page 711, the Circuit Court of Appeals for the Fifth Circuit in discussing the acreage tax levied by Chapter 6456, Acts of Florida, 1913, and the ad valorem tax levied by Chapter 8412, *supra*, held that both might be described as "drainage taxes". In that opinion the Court said:

"The last-mentioned circumstance is deprived of much of the significance attributed to it by the fact that in other parts (e.g., section 6) of that act the tax levied by it was called 'the acreage tax.' Manifestly the parts of that act in which the tax it levied was called the drainage tax was not intended to distinguish that tax from any other tax the proceeds of which were applicable for use for any purpose of Everglades drainage district, as no other such tax was authorized or levied prior to the enactment of the act of 1921 providing for the maintenance tax. *Both the acreage tax levied by the act creating Everglades drainage district and the ad valorem maintenance tax levied by the act of 1921 well might be referred to or described as a drainage tax*, as the proceeds of each of those taxes were applicable to the payment of expenses incident to the construction, operation, or maintenance of drainage works of that district provided for by the act which created it." (Emphasis supplied).

Thus the legislature of Florida has levied two taxes for the purpose of maintaining the District and paying the cost

of administering its affairs. Those taxes are separate from and in addition to the acreage taxes levied under the Acts by which the bonds were authorized. As appears above, the fact that those taxes are additional or that they were subsequently enacted does not affect their validity.

CONCLUSION

For the foregoing reasons and the facts appearing in the record, the decision of the lower court should be affirmed.

Respectfully submitted,

FRED. H. KENT

C. G. ASHBY,

*Counsel for Appellee,
Board of Commissioners
of Everglades Drainage
District.*

DATED: March 18, 1939.

FIL

SUI

H

BOAR
DR

APPE

J

BRIE
INT

Conn

te from
ne Acts
ve, the
re sub-

ring in
uld be

lee,
ioners
rinage

FILE COPY

RECEIVED

MAR 20 1939

CHARLES ELMORE CROPLEY
CLERK

IN THE
**SUPREME COURT OF THE UNITED
STATES**

October Term, 1938

No. 554

H. C. RORICK, JOSEPH R. GRUNDY and
J. R. EASTON, *Appellants*,

-vs-

BOARD OF COMMISSIONERS OF EVERGLADES
DRAINAGE DISTRICT, ETC., et al., *Appellees*.

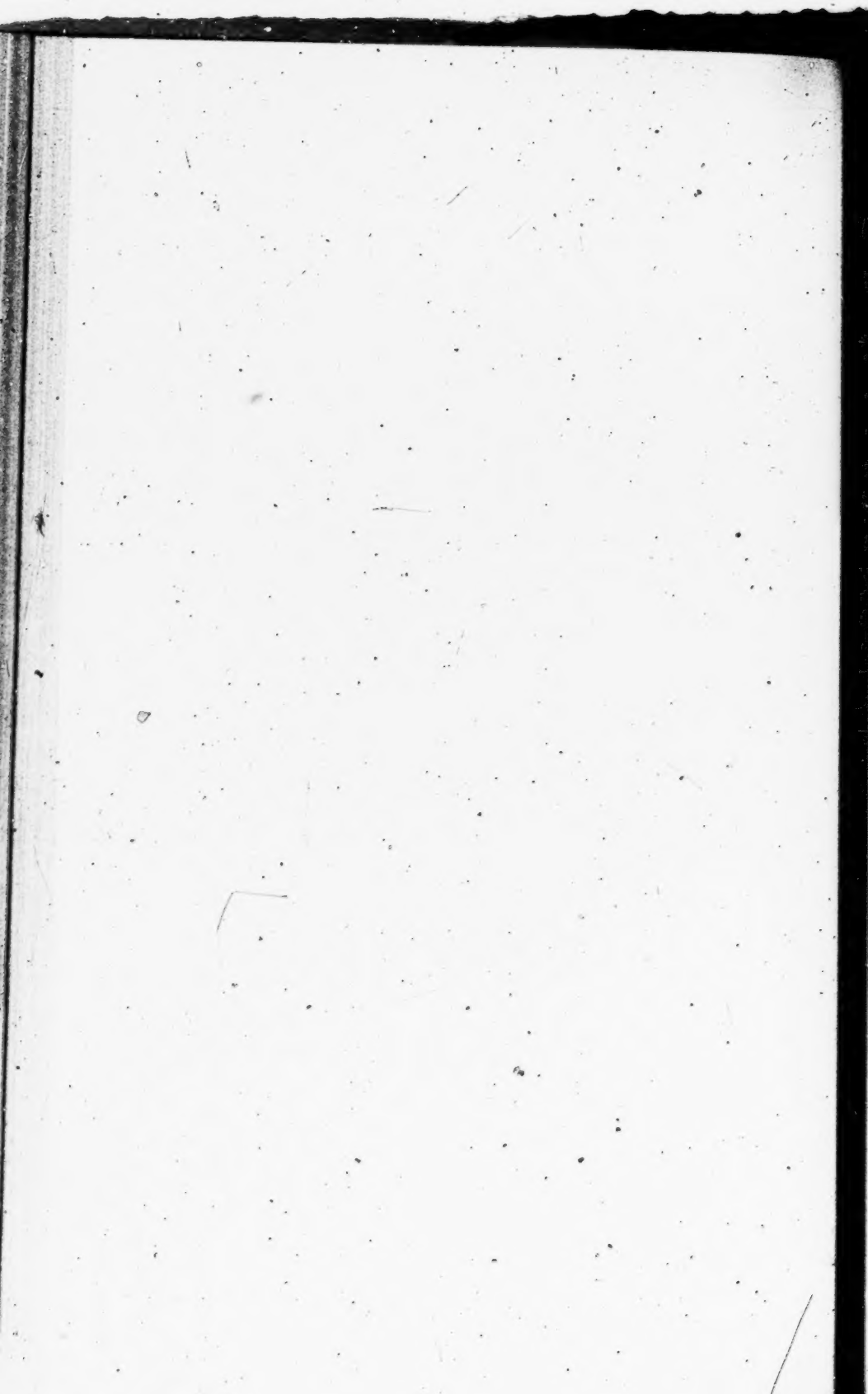
APPEAL FROM DECREE OF SPECIALLY CONSTITUTED THREE-
JUDGE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF FLORIDA

**BRIEF FOR APPELLEES, TRUSTEES OF THE
INTERNAL IMPROVEMENT FUND OF THE
STATE OF FLORIDA.**

GEORGE COUPER GIBBS,
Attorney General State of Florida.

MARVIN C. McINTOSH,
TYRUS A. NORWOOD,
Assistant Attorneys General.

Counsel for Appellees, Trustees of Internal Improvement
Fund of the State of Florida.



SUBJECT INDEX

	Page
Opinions Below	1
Statement of Ground of Jurisdiction	1
Statement of Case	2
Questions Presented	4

ARGUMENT:

Question 1	5-26
Question 2	26-32
Question 3	32-35
Question 4	35-42

TABLE OF CASES CITED

Advisory Opinion to Governor, 94 Fla. 967, 114 So. 850	23, 28
Bronson v. Board of Public Instruction, Osceola County, 108 Fla. 1, 145 So. 833, 836	35
Camp v. McLin, 44 Fla. 510, 32 So. 927	22
Cargyle v. New York Trust Co., 67 Fed. (2d.) 585..10, 39	
City of Texarkana, Tex. v. Arkansas-La. Gas. Co., 83 L. Ed., p. 435	10
Erie R. R. Co., v. Harry J. Tompkins, 304 U. S. 64..	10
Escambia Land & Mfg. Co., v. Ferry Pass Inspectors & Shippers Assn., 59 Fla. 239, 52 So. 715....	23

TABLE OF CASES CITED—Continued

	Page
Everglades Drainage Dist., et al. v. Florida Ranch & Dairy Corporation, 74 Fed. (2d.) 914	10
Everglades Sugar & Land Co. v. Bryan, 81 Fla. 75, 87 So. 68, 257 U. S. 667	36
Ferry v. King County, 141 U. S. 668	11
Haimovitz v. Hawk, 80 Fla. 272, 85 So. 668	23
Hampton, et al. v. State Board of Education, 90 Fla. 88, 105 So. 323	37
Hayes v. Travelers Ins. Co., 93 Fed. (2d.) p. 568....	10
Hightower v. Hogan, 69 Fla. 86, 68 So. 669	15
J. Bacon & Sons v. Martin, 83 L. Ed. 313	10
Jeems Bayou Fishing & Hunting Club v. U. S. 260 U. S. 561	23
Lee v. Brickell, 292 U. S. 415, 487	10
Martin v. Busch, 93 Fla. 535, 112 So. 274	19
Martin v. Dade Muck Land Co., 95 Fla. 530, 116 So. 449	18, 29
Mill Co., Iowa v. Chicago, Burlington, & Quincy R. R. Co., 107 U. S. 564	36
Miller v. Chase & Co., 88 Fla. 500, 102 So. 553.....	23
Minn. v. Northern Securities Company, 194 U. S. 48	39
Neblett, et al. v. Carpenter, etc., 83 L. Ed. p. 193	10
Pennoyer v. McConnaughy, 140 U. S. 1, 23	19, 38
Postal Tel. Cable Co. v. Alabama, 155 U. S. 482....	39

TABLE OF CASES CITED—Continued

	Page
Borick, et al. v. Board of Commissioners of Everglades Drainage District, et al., 57 Fed. (2d.) 1048-1063	1, 3, 16, 32
Borick et al. v. Board of Commissioners of Everglades Drainage District et al., 24 Fed. Supp., page 458	1, 3
Snell v. Chicago, 152 U. S. 191	11
State ex rel. Board of Commissioners of Everglades Drainage District v. Sholtz, Governor, etc., 112 Fla. 756, 150 So. 878	9, 11, 12
State ex rel. Little Yellow Drainage Dist., et al., v. Juneau County, et al., 227 N. W. 12	17
State Highway Commission v. Utah Construction Co., 278 U. S. 194	39
State v. Thursby, 104 Fla. 103, 139 So. 372	35
Stewart v. Stearns & Culver Lbr. Co., 56 Fla. 570, 48 So. 19	22
Sou. Drainage District, et al., v. State, 93 Fla. 672, 112 So. 561	37
Waialua Agricultural Co. Ltd., v. Christian, 305 U. S., page 91	10
Wall v. McNee, 87 Fed. (2d.), 768	16
Webster v. Powell, 36 Fla. 703, 18 So. 441	31
The Union Trust Co. of N. Y. v. The Southern Inland Nav. & Imp. Co., 130 U. S. 565, 567	27, 41
Trustees I. I. Fund v. Wm. Bailey, 10 Fla. 112	28
Trustees I. I. Fund et al. v. Root, 63 Fla. 666, 58 So. 371	36

TEXTBOOKS AND STATUTES CITED

	Page
Chap. 610, Laws of Florida, 1855 (Secs. 1384 & 1385, C.G.L., 1927, Sec. 1054, R.G.S. 1920)	13, 27, 36
Chap. 4414, Laws of Florida, 1895	31
Chap. 6456, Laws of Florida, 1913..3, 5, 8, 10, 12, 13, 24, 30	
Chap. 6957, Laws of Florida, 1915	6
Chap. 7305, Laws of Florida, 1917 (1541, C.G.L. 1927)	2, 3, 5, 6, 8, 10, 13, 14, 15, 29, 30
Chap. 7863, Laws of Florida, 1919 (1537, C.G.L. 1927)	6
Chap. 9119, Laws of Florida, 1923	5
Chap. 9132, Laws of Florida, 1923	13
Chap. 12,016, Laws of Florida, 1927	18, 29
Chap. 13,633, Laws of Florida, 1929	2, 4, 41
Chap. 14,717, Laws of Florida, 1931	2, 4, 8, 33, 41
Chap. 17,902, Laws of Florida, 1937	2, 8, 41
Chap. LXXV, Vol. 5, U. S. Statutes at Large, p. 788	36
Chap. LXXXIV, Vol. 9, U. S. Statutes at Large, pp. 519, 520	36
32 Corpus Juris, 81-83, Injunctions 66	34
6 Ruling Case Law 712, Contracts 120	22
10 Ruling Case Law, 706, 801, Estoppel 32, 112...	23
26 Ruling Case Law, 1279, 1281, 1316, Trusts 129, 131, 175	23

TEXTBOOKS AND STATUTES CITED—Continued

	Page
Sec. 5, Chap. 6456, Laws of Florida, 1913, (1534, C.G.L. 1927)	2, 5, 13, 15
Sec. 8, Chap. 6456, Laws of Florida, 1913	6
Sec. 12, Chap. 6456, Laws of Florida, 1913,	6, 15, 16
Sec. 13, Chap. 6456, Laws of Florida, 1913, (1542, C.G.L. 1927)	7
Sec. 16, Chap. 6456, Laws of Florida, 1913 (1546, C.G.L. 1927)	7
Sec. 23, Chap. 6456, Laws of Florida, 1913 (1557, C.G.L. 1927)	7, 18
Sec. 1182, Revised General Statutes, 1920 (1557, C.G.L. 1927)	7
Sec. 1384, Compiled General Laws, 1927	12, 13
Secs. 1401 to 1408, Compiled General Laws, 1927....	13
Sec. 1534, Compiled General Laws, 1927	12
Sec. 1541, Compiled General Laws, 1927	12, 15
Sec. 1546, Compiled General Laws, 1927	9
Sec. 1557, Compiled General Laws, 1927, (1182 R.G.S. 1920)	7
Sutherland's Statutory Construction, Second Ed., Vol. 2, page 614	10

CONSTITUTION OF UNITED STATES

	Page
Eleventh Amendment to Constitution of U. S.	37, 38

CONSTITUTION OF THE STATE OF FLORIDA

Art. III, Sec. 16, Fla. Constitution	30, 31
Art. IX, Sec. 6, Fla. Constitution	27, 28
Art. IX, Sec. 10, Fla. Constitution	23, 27, 28
Art. XII, Sec. 4, Fla. Constitution	27
Art. XII, Sec. 5, Fla. Constitution	27

IN THE
**SUPREME COURT OF THE UNITED
STATES**

October Term, 1938

No. 554

H. C. RORICK, JOSEPH R. GRUNDY and
J. R. EASTON, *Appellants*,

-vs-

BOARD OF COMMISSIONERS OF EVERGLADES
DRAINAGE DISTRICT, ETC., et al., *Appellees*.

*BRIEF OF APPELLEES**

OPINIONS BELOW

The opinions of the Court below in this case are reported in 57 Fed. (2d.), page 1048, and 24 Fed. Supp., page 458.

STATEMENT OF GROUND OF JURISDICTION

The grounds in which this Court has jurisdiction have been stated by the Appellants in their brief and we do not deem it necessary to further enlarge on this statement.

*Italics in this brief are ours unless otherwise indicated.

STATEMENT OF CASE

This is a suit in equity instituted by Appellants as holders of bonds of the Everglades Drainage District for the purpose of having adjudged unconstitutional and to enjoin the enforcement of Chapters 13,633, 14,717, 17,902, Laws of Florida, 1929, 1931 and 1937, respectively, on the ground that these statutes impair the obligation of Appellants' contract with the Board of Commissioners of the Everglades Drainage District and deprive Appellants of their property without due process of law. The Bill prayed that the Court determine that the Trustees of the Internal Improvement Fund were liable for the taxes on all lands bid off to them by virtue of Section 5 of Chapter 6456 Laws of Florida, 1913, as amended by Chapter 7305, Laws of Florida, 1917 (R. 64, 66, 71, 73, 225, 226), hereinafter referred to as certificated lands, and further prayed that the Court enter an order requiring the Trustees of the Internal Improvement Fund of Florida to pay the Board of Commissioners of Everglades Drainage District all of said taxes found to be due, and that in the event the Trustees of the Internal Improvement Fund failed to pay in full the said amounts, that the said Trustees be directed to render to the Court a full accounting of all the assets which the said Trustees control (R. 66 & 67).

The suit was originally instituted on May 19, 1931, and attacked only the 1929 Act, above referred to. However, by various amendments and supplemental bills (R. 54, 55, 68, 73, 208), the 1931 and 1937 Acts were attacked on various grounds. The parties defendant to this suit were the Board of Commissioners of Everglades Drainage District, a body corporate, the various Tax

Collectors and Tax Assessors of the counties in which the District is situate, the State Treasurer of the State of Florida, as Ex Officio Treasurer of the District, and the Trustees of the Internal Improvement Fund of the State of Florida.

Answers were filed to the original and supplemental Bills of Complaint (R. 111, 166, 167, 201) after motions to dismiss were denied. The Court below decided the case in favor of Appellants (Rorick, et al., vs. Board of Commissioners of Everglades Drainage District, et al., 57 Fed. (2d), 1048), but the order granting the injunction was vacated (R. 205) because of failure of Appellants to post injunction bond. The suit then lay dormant until 1937 when a second supplemental bill was filed praying the same relief as the first bills (R. 208). Motions to dismiss were filed by the Appellees (R. 229, 234) which the Court granted (R. 246) and from this order Appellants appealed.

The Attorney General of Florida only represents in this suit the defendants Trustees of the Internal Improvement Fund, hereinafter referred to as the Trustees. The only questions that will be discussed in this brief is the liability of the Trustees for the payment of delinquent taxes on lands in the District, which they do not own, but which have been bid off to them in accordance with the 1913 and 1917 Acts, hereinabove referred to. It is admitted that the Trustees are liable for the taxes on the lands which they own in the District, as agents of the State, it being their contention, solely, that they do not have to pay taxes on lands owned by individuals in the District when the individuals fail to pay their

taxes, despite the fact that at the tax sale the lands are bid off to them, as agents for the District.

The discussion of the liability of the Trustees for taxes on the certificated lands divides itself into four propositions, as follows:

1. There is no liability under the statutes upon the Trustees to pay taxes on the certificated lands, these statutes being construed in this manner by the Supreme Court of Florida, and this Court is bound to follow that construction.
2. The statutes, if construed to impose the obligation upon the Trustees to pay taxes on the certificated lands are unconstitutional and void because, of defect in the title and because they allow the State to become indebted contrary to the Constitution of the State of Florida.
3. The statute allowing the settlement between the Trustees and Board of Commissioners of Everglades Drainage District having been passed in 1931, and the Appellants having failed to enjoin, if possible, the enforcement of the 1929 and 1931 Acts for 7 years, they are guilty of laches and, therefore, are not entitled to any relief.
4. Under the Eleventh Amendment to the Constitution of the United States, the lower Court had no jurisdiction to entertain this suit as against the Trustees in their capacity as State agents because the suit in effect is one against

the State, there being no provision in the Constitution and Laws of Florida authorizing such a suit against the State.

ARGUMENT

1. THERE IS NO LIABILITY UNDER THE STATUTES UPON THE TRUSTEES TO PAY TAXES ON THE CERTIFICATED LANDS, THESE STATUTES BEING CONSTRUED IN THIS MANNER BY THE SUPREME COURT OF FLORIDA, AND THIS COURT IS BOUND TO FOLLOW THAT CONSTRUCTION.

The bonds in controversy were issued on July 1, 1920; January 1, 1921; July 1, 1921; July 1, 1922; July 1, 1923; January 1, 1925; and July 1, 1925 (R. 43, 46, 48, 50, 52), under and by virtue of Chapters 6456, 7305 and 9119, Laws of Florida, Acts of 1913, 1917 and 1923, respectively.

With reference to the payment of taxes on land in said District held by the Trustees of the Internal Improvement Fund, Sec. 5 of Chapter 6456 (1534 C. G. L. 1927) provides as follows:

"The lands within the district held by the Trustees of the Internal Improvement Fund shall be subject to the taxes hereby imposed . . . and the said Trustees in furtherance of the trusts upon which the said lands are held are hereby authorized and empowered to pay the same out of any funds in their possession derived from the sale of lands or otherwise."

Section 8 of this Act, as amended by Chapter 6957, Acts of 1915, and Chapter 7863, Acts of 1919, (1537 C. G. L. 1927), provides in part as follows:

“* * * Except as is herein specifically provided all laws relating to State and county taxes in this State are hereby made applicable to the Everglades Drainage District.”

Section 12 of Chapter 6456, as amended by Chapter 7305, Acts of 1917, (1541 C. G. L. 1927) reads as follows:

“On the day designated in the notice of sale, at 11 o'clock a. m., the tax collector shall commence the sale of those lands on which the drainage tax or assessment has not been paid as aforesaid, and shall continue the same from day to day until so much of each parcel thereof shall be sold as shall be sufficient to pay the drainage tax or assessment, costs and charges thereon, and in case there are no bidders, the whole tract shall be bid off by the tax collector for the Trustees of the Internal Improvement Fund, and shall be held by said trustees during the period herein allowed for the redemption of said lands in like manner and with like effect as lands sold to the State for non-payment of State and county taxes are held by the State, as now provided by law; and the tax collector must offer all such lands as assessed. The land shall be struck off to the person who will pay tax, costs and charges for the least portion of the land, and the portion thereof sold shall be taken from the southeast corner of such parcel and described in a square form, as near as may be.”

Section 13 of Chapter 6456 (1542 C. G. L. 1927), reads as follows:

"The tax collector shall require immediate payment by any person to whom any parcel of such land may be struck off, and in all cases when the payment is not made within one hour he may declare the bid cancelled and sell the land again on the same day or the day following, and any person so neglecting or refusing to pay any bid made by him shall not be entitled, after such neglect, to have any bid made by him received by the tax collector during such sale."

Part of Section 16, Chapter 6456, (1546 C. G. L. 1927), provides as follows:

"* * * The proceeds from the sale of such lands shall be applied by the said trustees to the payment of drainage taxes and assessments and other obligations of the trustees."

Part of Section 23 of Chapter 6456, being Section 1182, Revised General Statutes, 1920, (1557 C. G. L. 1927), reads as follows:

"* * * The provisions of this Article shall constitute an irrevocable contract between the said board and said Everglades Drainage District and the holders of any bonds and the coupons thereof, issued pursuant to the provisions hereof. Any holder of any of said bonds or coupons may either at law or in equity by suit, action or mandamus enforce and compel the performance of the duties required by this Article

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

442

38-69



of any of the officers or persons mentioned in this Article in relation to the said bonds, or to the collection, enforcement and application of the taxes for the payment thereof: Provided, however, that no obligation authorized by this Article shall be construed as an obligation of this State, but only as the obligation of the drainage district herein created."

The Drainage District was formed in 1913. No bonds were issued under the 1913 Act and there were of necessity no lands in the district on which the tax for bond payment had not been paid. The 1913 law provides when lands in the district are sold for non-payment of taxes that the tax certificates should issue to the Board of Commissioners of Everglades Drainage District. The 1917 law changed this so as to provide that the Tax Collector should bid off the whole tract of land when the taxes were not paid thereon to the Trustees to be held for a period of redemption in the same manner and like effect as lands sold to the State for non-payment of State and county taxes. The Appellants contend that these two Sections were part of the bond contract and because the 1931 and 1937 Acts allowed the lands to be bid off to the Board of Commissioners of Everglades Drainage District, that these Acts violated the contracts, and that the 1913 Act, as amended by the 1917 Act, imposed on the Trustees the mandatory duty to pay all delinquent taxes to the Board of Commissioners of Everglades Drainage District at the time the certificated lands were bid off to the Trustees.

At the outset we are confronted with the decision of the Supreme Court of Florida in *State ex rel. Board of Commissioners of Everglades Drainage District vs.*

Sholtz, Governor, etc., 150 So. 878, 112 Fla. 756, construing these statute. This was a mandamus suit brought by the Everglades Drainage District against the Trustees to compel the said Trustees to pay to the Board of Commissioners all delinquent taxes on certificated lands bid off to them in the district. In holding that the Trustees were not obligated under the Statutes to pay these taxes the Court said:

"Section 1546, Compiled General Laws of Florida 1927, modifying previous acts, provides that the owner of the land at the time of the tax sale or the bona fide successors in title of such owners, shall at any time prior to the day of the sale of such land have the right to redeem the same by paying the amount expressed in the face of such tax certificate, together with the interest thereon, as provided in said section, indicating the legislative intent that the lands should be held by the Trustees, in like manner, as lands are held by the State for unpaid State and county taxes.

"We are unable to glean from the various acts relating to the Everglades drainage district any legislative intent that the trustees of the Internal Improvement Fund were or are required to pay for tax certificates issued upon privately owned land within said district when said lands are 'bid off' under the provisions of law to such trustees, until such lands have been sold or redeemed, and we hold that the trustees of the Internal Improvement Fund hold the certificated land and the certificates in trust for the

Commissioners of the Everglades Drainage District."

The District Court followed this decision in dismissing the Bill of Complaint in this case, and correctly so, because it is well established that the Federal Courts are bound to follow the decisions of the highest court of the State in the construction of its statutes.

See: Sutherland's Statutory Construction, Second Ed., Vol. 2, page 614;

Erie R. R. Co., v. Harry J. Tompkins, 304 U. S. 64; *Lee v. Brickell*, 292 U. S. 415, 487; 74 Fed. (2d.), Page 914; 93 Fed. (2d.), page 568.

Cargyle v. New York Trust Co., 67 Fed. (2d.), 585; *Waialua Agricultural Co., Ltd., v. Christian*, decided Nov. 7, 1938, and reported in 305 U. S., page 91.

Neblett, et al. v. Carpenter, etc., decided Dec. 5, 1938, and reported in 83 L. Ed., page 193.

J. Bacon & Sons v. Martin, decided Jan. 3, 1939, reported in 83 L. Ed., page 313.

City of Texarkana, Tex., v. Arkansas-La. Gas. Co., decided Feb. 6, 1939, and reported in 83 L. Ed., page 435.

This rule is particularly pertinent in this case because the Appellants have not attacked the constitutionality of Chapters 6456 and 7307, Laws of Florida, 1913 and

1917, respectively, but, on the contrary, expressly rely upon them. The constitutionality of only the 1929, 1931 and 1937 Acts are being attacked in this suit.

Ferry v. King County, 141 U. S. 668;

Snell v. Chicago, 152 U. S. 191.

The contentions and insinuations in the Appellants' brief as to the Sholtz suit being a collusive one and not properly presented to the Court, comes with particularly poor grace, we think, in view of the allegations in the Bill of Complaint (R. 36 & 37) that the Board of Commissioners had failed and refused to try to collect the taxes that were alleged to be due them by the Trustees on certificated lands bid off to said Trustees. An examination of the records in the Supreme Court of Florida will show that this case was not collusive and that it was ably presented and defended by some of the most capable and outstanding lawyers in this State, whose professional reputation is above reproach, and neither do we think the insinuations in the brief are fair to the Supreme Court of Florida for that Court does not entertain collusive suits and the records in that case in said Court show that Messrs. Watson, Pasco & Brown of counsel for appellants since beginning of this litigation filed a brief in that case as *amicus curiae* urging the same contentions urged in this appeal by appellants.

Although it is the duty of this Court to follow the construction of these statutes by the Supreme Court of Florida, as hereinabove demonstrated, we submit that the construction placed on these statutes by the Supreme Court of Florida in the Sholtz case, *supra*, is the only logical interpretation.

The argument of Appellants to the effect that the Trustees, in addition to paying taxes on lands owned by the State and held by the Trustees, are required also to pay for Everglades Drainage District tax certificates and subsequent taxes is based on the assumption that the word "held" in Section 1541, above quoted, has the same significance and meaning as "held" in that part of Section 1534, above quoted. We submit that the word "held" in Section 1534, has reference only to lands owned by the State of Florida and held by the Trustees as State agents. This Section, originally enacted in 1913, as a part of the Everglades Drainage District Act, Chapter 6456, must be construed with reference to the circumstances then existing and the statutes then in force. Under this theory, such statute cannot be construed to apply to lands held by the Trustees certificated under the provisions of Section 1541, C. G. L., 1927, for the reason that no such statute existed in 1913 and never existed until passed by the Legislature of 1917. Under the provisions of this Section, as originally passed in Chapter 6456, lands were bid off to the Board of Commissioners of Everglades Drainage District. Since from 1913 to 1917 the Trustees held no lands, except State lands, we cannot construe that part of Section 1534, above quoted, to refer to any lands other than State lands. Certainly it cannot be construed to apply to lands that might be held by the Trustees, as agents of the Everglades Drainage District, under said Section 1541, as amended in 1917, some four years subsequent to the passage of Section 1534 in 1913, continued in practically the same identical language through all the subsequent years. State ex rel Board of Commissioners Everglades Drainage District vs. Sholtz, Governor, et al., supra:

"At the time of the original enactment, Section 5, Chapter 6456, Acts of 1913, the Trustees of the Internal Improvement Fund held no land other than that held as agents for the State, in pursuance of the trust imposed upon them, under Chapter 610, Acts of 1855, Section 1384 et seq., Sections 1401 to 1408, Compiled General Laws of Florida 1927. This is indicative of the Legislative intent that the word 'held,' as used in said section and subsequent enactments, applied only to lands held by the trustees as agents of the State, and did not and does not apply to certificated lands subsequently acquired and held by them."

Under the Everglades Drainage District Act, as originally passed in 1913 and continuing until amended in 1917; all lands for which there were no bidders were required to be bid off to the Board of Commissioners of Everglades Drainage District. By amendment of Chapter 7305, Acts of 1917, such lands were required to be bid off to the Trustees. The tax certificates, covering lands bid in for the Board of Commissioners of Everglades Drainage District for 1913 to 1917, continued to be held by such Board until the passage of Chapter 9132, Acts of 1923, which Act transferred said certificates from the Board of Commissioners of Everglades Drainage District to the Trustees.

Such certificates were transferred to the Trustees without any payment for same and without any obligation upon the Trustees to pay for same, and they were authorized to dispose of such certificates in the same manner that they were authorized to dispose of tax

certificates bid in to them under the provisions of Chapter 7305, Laws of 1917. Since these tax certificates were transferred to the Trustees without payment for same, we think that this is very suggestive of the idea that the prior amendatory Act of 1917 did not contemplate payment by the Trustees for tax certificates and subsequent taxes thereon.

There is a clear distinction between the status of the Trustees in reference to drainage tax certificates bid in for them and the status of a common purchaser in reference to the same. The law requires the Tax Collector, when there are no bidders, to bid off the lands for the Trustees. The Trustees are required to receive and be custodian of such certificates. The Trustees have no option as to whether they will or will not take these certificates. They may not plead that they have no funds with which to pay for these certificates, nor that they do not desire such certificates, nor can they decline them for any reason. They cannot consult their judgment as to whether they shall be holders of lands by virtue of such certificates, but by law they are made the instrumentality through which such certificates must be handled. They are held subject to conditions imposed by law. They are subject to redemption. They are subject to sale upon condition of notice given.

The status of a common purchaser is quite different. He exercises his own judgment as to which, if any, lands he will purchase. He may decide whether or not he has money to justify a purchase. He may select such lands as he may desire and may bid such amount as he chooses provided such amount be within the limitations required by law. He takes the certificate subject to the right of

redemption but within a specified period. At the expiration of the time limit for redemption, he may perfect his title and thereby extinguish all rights of the original owner. None of these privileges enjoyed by the common purchaser are enjoyed by the Trustees. Such being true, there must be and there is a wide difference between the status of a common purchaser and the status of the Trustees, as holders of such certificates. Consistent with this wide difference is the following: The common purchaser is required by statute to pay for the certificates which he purchases. The Trustees are not required by statute to pay for certificates bid off for them by the Tax Collector unless by a strained interpretation of the word "held," as used in Section 5 of Chapter 6456 (1534 C. G. L. 1927) which having a specific meaning when passed in 1913, should be construed in the statute, Chapter 7305, Acts of 1917, to have the same meaning and to relate only to State owned lands, although Section 12, Chapter 6456, Laws of 1913, now Section 1541, Compiled General Laws of Florida, 1927, provides that when taxes are not paid on lands in the District, that the whole tract shall be bid off to the Tax Collector for the Trustees and shall be "held" by said Trustees during the period herein allowed for the redemption of said lands in like manner and with like effect as lands sold to the State for non-payment of State and county taxes. The law as to redemption of lands bid off to the State for the non-payment of taxes in force at the time this law became effective did not vest the fee simple title in the State, but allowed redemption at the time tax deed was issued. See:

Hightower v. Hogan, 69 Fla. 86, 68 So. 669;

Also:

Dissenting opinion of Judge Bryan in *Rorick v. Board of Comm'rs. of Everglades Drain. District*, supra, p. 1063;

Also:

Wall v. McNee, 87 Fed. (2d.), 768,

where the Circuit Court of Appeals of the Fifth Circuit held as follows:

"The statutes regulating the collection of property taxes in Florida are fully stated in the above-cited cases. Such taxes, while not a personal charge against the property owner, are a lien upon the property assessed. When not paid, the property is offered publicly for sale and, if no one will bid the amount of the taxes charged against it, it is knocked off to the State and a sale certificate issued accordingly. The property may be redeemed by the owner within two years. If not then redeemed, the title vests in the State but may still be redeemed until otherwise disposed of. The cited cases make it plain that the State holds but as trustee for the taxing authorities concerned, and, when it receives money for the property, the money should go to discharge in due order their claims. * * *

If Section 12 of the 1913 Act was amended for the express purpose, as contended by Appellants, to impose liability on the Trustees to pay taxes on certificated lands, why was not the statute amended so as to clearly express this intention. This was a heavy burden to

place on the Trustees and one that should not be thrust upon them in the absence of clear and express provisions to do so.

See:

State ex rel. Little Yellow Drainage Dist., et al., v. Juneau County, et al., 227 N. W. 12;

where the Supreme Court of Wisconsin in speaking on this question said:

"A legislative purpose to make the county absolutely liable to the drainage district for delinquent drainage assessments is not to be lightly imputed. Such a rule would make the county a guarantor of the payment of all such assessments without its consent. Under such a rule drainage assessments would have the resources of the entire county back of them, and there could be no such failures as arose in the Dancy Drainage District, the affairs of which have frequently been before us. Why should a provision negating the liability of the county on these drainage tax certificates be necessary, when the plan of the drainage law taken as a whole reveals simply an intent to utilize for the collection of these drainage assessments the machinery perfected by statute and court decisions for the collection of general taxes? No such intent should be imputed to the Legislature in the absence of a plain, express, affirmative provision imposing such a liability upon the county. No such affirmative provision is to be found

anywhere in the law but, on the contrary, the provisions of paragraph 2 of said Section 1370-24 of Chapter 557 of the Laws of 1919 contain an express negation of any such liability."

Section 23, Chapter 6456 of 1918 (Section 1557, C. G. L., 1927), likewise contains an express negation of such a liability on the State of Florida in the following language:

"Provided, however, that no obligation authorized by this Article shall be construed as an obligation of this State, but only as the obligation of the drainage district herein created."

Chapter 12,016, Laws of Florida, 1927, authorized the issuance of additional bonds in the Everglades Drainage District and in this Act it was specifically provided that the Trustees should pay the taxes on all certificated lands bid off. This Act forms the basis of the decision in the case of *Martin v. Dade Muck Land Co.*, 116 So. 449, 95 Fla. 530, yet with the specific direction and command in the Act for the Trustees to pay these taxes, the Supreme Court of Florida very strictly construed this provisions of the statute and held that it meant that the taxes could be paid only from the proceeds of sale of swamp and over-flowed lands owned by the Trustees. This Act was repealed and no other Everglades Drainage District Act, before or since, contains any such direction or command. Is it not reasonable to assume that if the Legislature had intended to make the Trustees pay these taxes that it would have said so in plain and explicit terms in the 1917 Act.

Appellants contend that the Trustees actually made payments of the taxes on these ~~certificated~~ lands for certain years and this was a departmental construction of the Act, and should guide this Court in construing the Act. While it is well settled that a departmental construction of an Act is a guide to the Court in its construction, it is not conclusive on a Court and should not be followed when the public benefit or right is involved and when the construction itself is manifestly incorrect.

See:

Pennoyer v. McCannaughy, 140 U. S. 1, 23.

The Appellants buying these bonds were charged with knowledge of and bound by the contents of the statute and cannot now rely on an erroneous departmental construction of the Act. This erroneous construction by the then Trustees is not a part of the bond contract and no right of Appellants has been violated by the Trustees refusing to longer follow this erroneous and manifestly incorrect construction.

See:

Martin v. Busch, 93 Fla. 535, 112 So. 274,

where the Supreme Court of Florida, said:

“The State Trustees cannot by allegation, averment or admission in pleading, or otherwise, ~~affect~~ the legal status of or the State's title to sovereignty, swamp and over-flowed or other lands held by the Trustees under different statutes for distinct and definite State purposes.”

The alleged agreements of the Trustees to pay for certificated lands bid off to them, are shown by the copies of Minutes of said Trustees under dates of March 10, 1924, and June 15, 1925 (R. 27, 30). The answer of the Trustees (R. 135) recites copy of a letter from Spitzer, Rorick & Company to the Board of Commissioners of Everglades Drainage District, under date of June 16, 1925, as follows:

“ . . . And in consideration of the Trustees of the Internal Improvement Fund agreeing this date, that from now on it will promptly pay at Everglades Drainage Tax Sales, in cash, for all lands bid in or automatically struck off to said Trustees at said Tax Sale instead of waiting until two years thereafter, as heretofore, and in consideration of your Board agreeing that no additional part of said \$3,500,000.00 bonds shall be issued prior to January 1, 1929, without our written consent, we hereby agree to now purchase from your Board \$1,250,000.00 out of said \$3,500,000.00 recently authorized, said bonds to bear date of January 1, 1926, unless some other date is hereafter mutually agreed upon, and to bear interest at 5% per annum, payable semi-annually in gold coin of its present standard of weight and fineness, both principal and interest to be payable at the National Park Bank in the City of New York, unless some other New York Bank shall hereafter be mutually agreed upon, and said bonds shall be in denomination of \$1,000.00 each and shall mature serially in 10 to 30 years from their date in approximately equal installments, unless some different maturities

for said bonds shall hereafter be mutually agreed upon. Said bonds are to be issued and delivered to us in New York prior to February 1st, 1926, and we agree to pay you therefor an amount equal to a 5-5/8% basis figured on the average maturities of said bonds from their date."

It is averred in the answer of the Trustees (R. 135, 136) that no part of the \$1,250,000.00 of new bonds mentioned in said letter were purchased by Spitzer, Rorick & Company. Since Spitzer, Rorick & Company has not lived up to its agreement the Trustees cannot be held bound by their alleged agreement.

We respectfully submit that both of the above alleged agreements of the Trustees if considered by the Court as a part of the bond contract are *ultra vires*. The Trustees, as agents of the State of Florida, could not by contract affect the trust funds of the State. The Trustees are limited in their powers by statute and they are not authorized to make pledges of State funds. Spitzer, Rorick & Company were charged with the duty of knowing the statutory powers, as well as limitations, of the Trustees. They were also charged with knowledge that any attempted pledge by the Trustees of funds belonging to the State was contrary to public policy, as well as the statutes of the State, and the provisions of our State Constitution, which have heretofore been recited.

It was incumbent upon Appellants to allege the power of the Trustees to make such agreement, but they have failed to make any such allegation or to set up any facts disclosing any such power.

It is particularly necessary for persons dealing with a trustee to take careful notice of the scope of his authority and it is well settled that a trustee cannot charge the trust estate by executing contracts unless authorized to do so by the terms of the instrument creating the trust.

It is a well known principle of law that the neglects or omissions of public officers as to their public duties will not work an estoppel against the State, and that the State can not be estopped by the unauthorized acts of its officers, and a State is not estopped from denying the validity of a contract made without authority even though the contractor has in good faith performed services under it since he must, at his peril, know the authority of those who seem to act for the State.

Where a public officer undertakes to bind the State by a contract, he must possess a real as distinguished from an apparent authority derived from the statute, and if the authority does not exist the State cannot be held bound by such contract:

“Where a public officer undertakes to bind the State by a contract made in his behalf, he must possess a real, as distinguished from an apparent, authority, derived from statute; and if the authority does not exist the State cannot be held bound by such contract, upon the theory that the officer has so conducted himself with respect to the contract as to estop himself from denying its validity.”

Camp v. McLin, 44 Fla. 510, 32 So. 927;

Stewart v. Stearns & Culver Lbr. Co., 56 Fla. 570, 48 So. 19; 6 R. C. L. 712, Contracts 120;

Escambia Land & Mfg. Co. v. Ferry Pass Inspectors & Shippers Assn., 59 Fla. 239, 52 So. 715;

Haimovitz v. Hawk, 80 Fla. 272, 85 So. 668;
26 R. C. L., 1279, 1281, 1316, Trusts 129, 131, 175;
10 R. C. L., 706, 801, Estoppel 32, 112;

Miller v. Chase & Co., 88 Fla. 500, 102 So. 553;

Jeems Bayou Fishing and Hunting Club v. U. S., 260 U. S. 561.

The construction contended for by the Appellants would be in effect to make the State liable for the payment of these taxes and, indeed, the Appellants advertised in their prospectus to prospective purchasers of these bonds which they sold "that they were practically guaranteed by the State of Florida." (R. 198). This is contrary to the general practice of the State of Florida in making internal improvements because the State of Florida cannot borrow money for any purpose, under its Constitution, nor can it, or any of its agencies, pledge its credit. Section 10, Article XII, Constitution of the State of Florida.

It has been the policy of the State to make internal improvements without incurring debts and to live within the income of the State, which policy is particularly apparent in the late highway construction program carried on by the State in recent years. Debts or obligations are synonymous with bonds as construed by the Supreme Court of Florida in Advisory Opinion to the Governor, 94 Fla. 967, 114 So. 850, in which this language is used:

"In our view any attempt to authorize an agency of the State to borrow money or issue any promise to pay which would be an obligation of the State for anticipated public work is in violation of the provisions of the Constitution upon that subject,"

and in which opinion in paragraph 5 of the Syllabus, the Court further said:

"State bonds can be issued only for the purpose of repelling invasion or suppressing insurrection. *The spirit, as well as the letter of that inhibition should be preserved and given full force and effect.*"

The very purpose of the original Everglades Drainage District Act, Chapter 6456, Acts of 1913, was to create a special district, with a special board, separate and distinct from any State Board in order that such district, with its governing board, might be in position to issue bonds without any obligation resting upon the State and without violations of constitutional provisions of the State prohibiting State bonds and the pledging of the credit of the State.

The history of the Everglades Drainage District and the legislation pertaining thereto, to and including the sale of Everglades Drainage District bonds, shows that it was not the purpose of the Trustees of the Internal Improvement Fund or of the Legislature that the Trustees should be obligated to pay for Everglades Drainage District tax certificates bid off to them or the subsequent taxes on lands covered thereby, and this is shown by the following:

(a) In a report from the old Drainage Board, created under the Acts of 1905 and 1907, and the Trustees of the Internal Improvement Fund to the Legislature of 1913, the following language is contained, as shown on page 911 of the Senate Journal of 1913: (R. 161-162):

"We are of the opinion that in order to get the best results that it is necessary to push the drainage operations much more rapidly than in the past. It is also our opinion that there are only two ways in which the operations can be carried on as rapidly as should be—one is by levying a very high drainage tax within the drainage district, and another is by providing by law for the issuance of drainage district bonds, which said bonds should be secured by the drainage tax to be levied upon the lands only in the drainage district, the interest on said bonds, and the sinking fund for their retirement to be provided from the said drainage tax. This plan would not create a State debt and would require a tax only in the drainage district upon lands benefitted. As the lands held by the Trustees constitute only about one-fourth of the land in the drainage district the taxes on State lands held by the Trustees would be for only one-fourth of the obligation incurred on account of the proposed bond issue."

(b) That the Legislature of 1913 amended the Everglades Drainage District Bill which, when finally adopted, became Chapter 6456, Acts of 1913, which amendment was never altered to and including the date of the sale

of all Everglades Drainage District bonds, as shown on page 2233 of the Legislative Senate Journal of 1913, as follows (R. 162):

"Mr. Calkins, by unanimous consent, offered the following amendment:

Add to Section 23 at the end thereof, the following: 'Provided, however, That no obligation authorized by this Act shall be construed as an obligation of this State, but only as the obligation of the drainage district herein created.'

Mr. Calkins moved to adopt the amendment. Which was agreed to,"

(c) That the issue of bonds without any recital therein that the Trustees of the Internal Improvement Fund were required to pay for Everglades Drainage District tax certificates when bid off to the Trustees, and to pay subsequent taxes on lands covered thereby, is a recognition upon the part of the Board of Commissioners of Everglades Drainage District and the bond purchasers that the Trustees are not required to make such payments.

2. THE STATUTES IF CONSTRUED TO IMPOSE THE OBLIGATION UPON THE TRUSTEES TO PAY TAXES ON THE CERTIFICATED LANDS ARE UNCONSTITUTIONAL AND VOID BECAUSE OF DEFECT IN THE TITLE AND BECAUSE THEY ALLOW THE STATE TO

BECOME INDEBTED CONTRARY TO THE CONSTITUTION OF THE STATE OF FLORIDA.

If the Court should construe the 1913 and 1917 laws so as to require the Trustees to pay the taxes on certificated lands bid off to them, it is clear that this construction would force the State to pay these taxes because the Trustees are State agents.

*The Union Trust Co. of N. Y. v. The Southern
Inland Nav. & Imp. Co.*, 130 U. S. 565.

The beneficial interest in and to all the assets which the Trustees own is vested in the State of Florida, and 25% of receipts from the sale of all lands by the Trustees are by Section 4, Article XII, of the Constitution of the State of Florida, directed to be turned over to the State School Fund, and under Section 5 of the same Article the said fund remains sacred and inviolate. The Trustees have no other assets except public lands, which were granted to them in trust, and the proceeds thereof, by the State. Chapter 610, Laws of Florida, Acts of 1855, now Section 1054, Revised General Statutes of Florida, 1920, (Sec. 1384, et seq., C. G. L., 1927).

It is obvious if the statutes are construed so as to impose the duty on the Trustees of paying the taxes on the certificated lands, then the Legislature in enacting the statute has pledged the credit of the State for the payment of the bonds of this District contrary to Section 6, Article IX, and Section 10, Article IX, of the Constitution of Florida, which are as follows:

“The Legislature shall have power to provide
for issuing State bonds only for the purpose of

repelling invasion or suppressing insurrection, or for the purpose of redeeming or refunding bonds already issued, at a lower rate of interest." Sec. 6, Article IX, Constitution of Florida

"The credit of the State shall not be pledged or loaned to any individual, company, corporation or association; nor shall the State become a joint owner or stockholder in any company, association or corporation. The Legislature shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual." Sec. 10, Article IX, Constitution of Florida.

It is clear from these provisions of the Constitution that neither the State, nor its agents, the Trustees, are permitted under our Constitution either to issue bonds for drainage purposes, or to loan or pledge the credit of the State for the payment of such bonds. The Appellants cite the case of Trustees I. I. Fund vs. Wm. Bailey, 10 Fla. 112, as authority for the Legislature to pledge the internal improvement fund, but Appellants failed to apprise the Court that the ruling of the Supreme Court of Florida in this case was under the Constitution of 1838, which contained no such provisions, as above quoted, prohibiting the State from issuing or guaranteeing bonds of any person or corporation.

See Advisory Opinion to Governor, 114 So. 850, 94 Fla. 967,

where the Supreme Court of Florida said:

"In our view any attempt to authorize an agency of the State to borrow money or issue any promise to pay, which would be an obligation of the State for anticipated public work, is a violation of the provisions of the Constitution upon that subject * * * the spirit, as well as the letter of that inhibition, should be preserved and given full force and effect."

The Appellants also cite the case of *Martin v. Dade Muck Land Co.*, 116 So. 449, 95 Fla. 530, as authority for the proposition that the Legislature did have the right to authorize the District to issue these bonds and require the Trustees to pay them. The ruling of the Court in this case applied only to Chapter 12,016, Acts of 1927, which has been repealed and under which no bonds were ever issued. The holding in that case was based on Section 4 of said Chapter, which contained a definite statutory requirement for payment by the Trustees in case there was no bidder for the land. The Court will see from reading this opinion that the Supreme Court of Florida limited the construction of this Act very closely, which limited construction is not contended for in this case, but the Appellants in their Bill of Complaint and in their brief insist that there is an unlimited obligation on the Trustees to pay taxes on the certificated lands.

"Title to Chapter 7305 does not indicate intention to require trustees to pay taxes. Therefore, provision in the Act if construed so to do would be unconstitutional."

Section 16, Article III, of the Constitution of Florida, provides in part as follows:

“Each law enacted in the Legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be amended or revised by reference to its title only; but in such case the act, as revised, or section as amended, shall be re-enacted and published at length.”

It is not contended that the 1913 Act required the Trustees to pay the taxes on the certificated lands, but it is contended that by reason of the amendment to this Act by Chapter 7305, Laws of Florida, Acts of 1917, that this duty was imposed on the Trustees. The title to Chapter 7305 is as follows:

“AN ACT TO AMEND SECTION 9 OF CHAPTER 6456, ACTS OF 1913, LAWS OF FLORIDA; SECTION 10 OF CHAPTER 6456, ACTS OF 1913, LAWS OF FLORIDA, AS AMENDED BY CHAPTER 6957, ACTS OF 1915, LAWS OF FLORIDA; SECTION 12 OF CHAPTER 6456, ACTS OF 1913; LAWS OF FLORIDA; SECTIONS 16 AND 17 OF CHAPTER 6456, ACTS OF 1913, LAWS OF FLORIDA, AS AMENDED BY CHAPTER 6957, ACTS OF 1915, LAWS OF FLORIDA; AND SECTION 20 OF CHAPTER 6456, ACTS OF 1913, LAWS OF FLORIDA, RELATING TO THE CREATION OF EVERGLADES DRAINAGE DISTRICT OF THE STATE OF

FLORIDA, DEFINING ITS BOUNDARIES AND PRESCRIBING ITS POWERS, AND AUTHORIZING THE LEVY AND COLLECTION OF TAXES AND ASSESSMENTS UPON THE LANDS IN SAID DISTRICT FOR THE PURPOSE OF DRAINAGE AND RECLAIMING THE SAID LANDS AND CARRYING INTO EFFECT THE PROVISIONS OF SAID ACT."

It is clear from a careful reading of this title that it is in conflict with the above quoted provision of the Constitution; no where does it give any notice of intention on the part of the Legislature to impose the burden upon the Trustees of paying millions of dollars of taxes on lands they did not own. If there was ever an Act which deceived the Legislature, if it is to be construed as the Appellants contend, this Act is one. In the case of Webster v. Powell, 18 So. 441, 36 Fla. 703, the Supreme Court of Florida had occasion to pass upon the validity of Chapter 4414, Laws of Florida, Acts of 1895, entitled:

"AN ACT TO AMEND SECTIONS 1270 AND 1272 OF THE REVISED GENERAL STATUTES OF THE STATE OF FLORIDA, RELATING TO SUPERSEDEAS ORDERS AND SUPERSEDEAS BONDS."

The Court held this title insufficient and, therefore, the whole Act invalid on the ground that the title was deceptive and in violation of Section 16, Article III, of the State Constitution, and in the opinion the Court said:

" . . . One of the objects of the provision, as stated by Cooley (Const. Lim. p. 172) was 'to

prevent surprise or fraud upon the legislature by means of provisions in bills of which the titles give no intimation, and which might therefore be overlooked, and carelessly and unintentionally adopted.' The history of legislation had shown that, by adroit management, provisions had been incorporated into measures in no way indicated by the title, and that members of the legislature had voted for such measures in ignorance of such provisions."

3. THE STATUTE ALLOWING THE SETTLEMENT BETWEEN THE TRUSTEES AND BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT HAVING BEEN PASSED IN 1931, AND THE APPELLANTS HAVING FAILED TO ENJOIN, IF POSSIBLE, THE ENFORCEMENT OF THE 1929 AND 1931 ACTS FOR 7 YEARS, THEY ARE GUILTY OF LACHES AND, THEREFORE, ARE NOT ENTITLED TO ANY RELIEF.

This Court in the former consideration of this case, 57 Fed. (2d) 1048, page 1063, used the following language with reference to change of personnel of the Board of Commissioners of Everglades Drainage District:

"As to the sixth question: The provisions of the 1931 act, changing the personnel of board of commissioners to five civilians in lieu of five State officers as originally provided, impairs no vested contract right of plaintiffs. The district remains, with officers empowered to perform all its duties toward bondholders. Neither

the resources nor the remedy for the payment of plaintiffs' bonds are affected within the purview of the contract clause of the Constitution.

A mere change in personnel of a public board or body is not usually regarded as an impairment of contract obligations. See *State v. Knowles*, 16 Fla. 577; *Graham v. Folsom*, 200 U. S. 248, 26 S. Ct. 245, 50 L. Ed. 464; *Mobile v. Watson*, 116 U. S. 289, 6 S. Ct. 398, 29 L. Ed. 620; *State v. Goodgame*, 91 Fla. 871, 108 So. 836, 47 A.L.R. 118; *Board v. Phillips*, 67 Kan. 549, 73 P. 97, 100 Am. St. Rep. 475; 1 *Cooley Const. Lim.* (8th Ed.) p. 560; 12 C.J. 1008."

Section 65 of Chapter 14,717, Acts of 1931, makes provision for the transfer of Everglades Drainage District tax certificates from the Trustees to the Board of Commissioners of Everglades Drainage District.

The title of said Act specifically includes such provision. The title of the Act begins with the following words:

"An Act relating to Everglades Drainage District,"

and among other provisions contained therein is the following:

"Providing for the transfer of certain tax sales certificates to Board of Commissioners of Everglades Drainage District."

The provision of Section 65 providing for such transfer is a distinct subdivision of the Act and such pro-

vision may properly be upheld even though the taxing and other provisions of said Act should be held invalid.

The inconvenience to the public, to the respective boards and to third parties, and the confusion and disorder that would result from a disturbance of the settlement on September 18th, 1931, between the Trustees Internal Improvement Fund and the Board of Commissioners of Everglades Drainage District are proper matters for serious consideration. About six and one-half years have elapsed since said date and all of the tax certificates and records have been transferred from the Capitol at Tallahassee to the City of West Palm Beach. Many tax certificates held by the Board of Commissioners of Everglades Drainage District, under such settlement as well as certain certificates retained by the Trustees, have been redeemed, cancelled or sold to individuals, and doubtless many suits to quiet titles have been filed and adjudicated. In such situation, it is apparent that any disturbance of such settlement at this late date would work serious confusion, disorder and inconvenience and would jeopardize the interests or titles of numerous persons in and to lands acquired under such tax certificates.

We quote from 32 Corpus Juris, 81 to 83, Injunctions 66, as follows:

"On an application for an injunction it is the duty of the Court to take into consideration the injury or inconvenience which may result to the public in case an injunction is awarded. Accordingly, while there are decisions apparently to the contrary, the weight of authority is to the

effect that when the issuance of an injunction will cause serious public inconvenience or loss, without a correspondingly great advantage to the complainant, no injunction will be granted. So while there is some authority apparently to the contrary, it is generally held that if the injunction would have the effect of greatly injuring or inconveniencing the public, it may be refused even though as against defendant the complainant would be entitled to its issuance."

"In suits for relief by injunction, the Court in the exercise of its discretion will consider the injury or inconvenience which will result to third persons by the issuance of an injunction."

Attention is also called to the case of *Bronson vs. Board of Public Instruction*, Osceola County, 108 Fla. 1, 145 So. 833, 836, where our Supreme Court stated that it was committed to the doctrine above quoted and affirmed the decision of the lower Court in denying an injunction.

See also *State vs. Thursby*, 104 Fla. 103, 139 So. 372, and especially the comment of the Court under headnote 8, page 377, in which case writ of mandamus was refused.

4. UNDER THE ELEVENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THE LOWER COURT HAD NO JURISDICTION TO ENTERTAIN THIS SUIT AS AGAINST THE TRUSTEES IN THEIR CAPACITY AS STATE AGENTS BECAUSE THE SUIT IN EFFECT IS ONE AGAINST THE

STATE, THERE BEING NO PROVISION IN THE CONSTITUTION AND LAWS OF FLORIDA AUTHORIZING SUCH A SUIT AGAINST THE STATE.

Chapter 610, Laws of Florida, Acts of 1855 (now Sections 1384 and 1385, C. G. L., 1927), created the Trustees of the Internal Improvement Fund and vested in them certain lands granted to the State under Acts of Congress of March 3, 1845 (Chap. LXXV Vol. 5 U. S. Statutes at Large, p. 788), together with swamp and overflowed lands, under date of September 28, 1850 (Chap. LXXXIV Vol. 9 U. S. Statutes at Large p. 519, 520). These lands were granted to the State of Florida in fee simple, subject only to a trust to use them or the proceeds thereof for internal improvement purposes, and then the State of Florida vested these lands in the Trustees subject to this same trust. This trust, however, is not between the purchasers of the land and the State, but it is between the United States and the State of Florida.

Everglades Sugar & Land Co. vs. Bryan, 81 Fla. 75, 87 So. 68, 257 U. S. 667;

Am. Emigrant Co. vs. Adams Company, 100 U. S. 61;

Trustees I. I. Fund, et al. vs. Root, 63 Fla. 666, 58 So. 371;

Mill Co., Iowa vs. Chicago, Burlington & Quincy R. R. Co., 107 U. S. 564.

Therefore, this suit cannot be construed to mean a suit brought by Appellants to require the Trustees to

comply with the trust by which the land was originally granted by the State of Florida; for such a suit cannot be brought by them.

The Trustees have no other assets except the proceeds of the lands granted to them by the State, and if the Trustees have to pay these taxes the loss must by necessity fall on the State. Therefore, the conclusion is inevitable that this is a suit against the State and this Court does not have jurisdiction because of the Eleventh Amendment of the Constitution of the United States, which is as follows:

“The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.”

There is no provision in the Constitution or laws of the State of Florida allowing a suit against the State.

Hampton, et al. vs. State Board of Education,
105 So. 323, 90 Fla. 88;

Sou. Drainage District, et al. vs. State, 112
So. 561, 93 Fla. 672.

The Court must keep in mind that this is not a suit brought to enjoin the Trustees from acting under some unconstitutional statute, but one against them as officers of the State to require them to perform certain duties under statutes whose constitutionality is not attacked. This is a suit in which affirmative relief is asked against the agents of the State of Florida. The prayers of the Bill

(R. 73, 64, 66 and 71) ask that the Trustees be required to pay the money that is claimed to be due by them to the Board of Commissioners of Everglades Drainage District. An accounting is asked of the Trustees requiring them to show all the assets which they have in order that the same might be subjected to the payment of whatever amount the Court might find was due by them to the Commissioners of Everglades Drainage District.

The authorities on the question of when a suit is within the prohibition of the Eleventh Amendment are thoroughly discussed by this Court in the case of *Pennoy vs. McConaughy*, 140 U. S. 1. The dividing line between suits which are suits against the State and those against an officer is stated on page 16 as follows:

“The dividing line between the cases to which we have referred and the class of cases in which it has been held that the State is a party defendant, and, therefore, not suable, by virtue of the inhibition contained in the Eleventh Amendment to the Constitution, was adverted to in *Cunningham vs. Macon & Brunswick Railroad Co.*, where it was said, referring to the case of *Davis vs. Gray*, supra: ‘Nor was there in that case any affirmative relief granted by ordering the governor and land commissioner to perform any act towards perfecting the title of the company.’ 109 U. S. 453, 454. Thus holding, by implication, at least, that affirmative relief would not be granted against a State officer, by ordering him to do and perform acts forbidden

by the law of his State, even though such law might be unconstitutional.

"The same distinction was pointed out in *Hagood vs. Southern*, which was held to be, in effect, a suit against the State, and it was said: 'A broad line of demarcation separates from such cases as the present, in which the decrees require, by affirmative official action on the part of the defendants, the performance of an obligation which belongs to the State in its political capacity, those in which actions at law or suits in equity are maintained against defendants who, while claiming to act as officers of the State, violate and invade the personal and property rights of the plaintiffs, under color of authority, unconstitutional and void. 117 U. S. 52, 70.'"

See also:

State Highway Commission vs. Utah Construction Co., 278 U. S. 194;

Postal Tel. Cable Co., vs. Alabama, 155 U. S. 482;

Minn. vs. Northern Securities Company, 194 U. S. 48;

Cargyle vs. New York Trust Co., 67 Fed. (2d.) 585.

These cases all substantiate the opinion in the *Penoyer* case to the effect that when there is any affirma-

tive relief asked against State Officers or agents, which affects the State, either directly or indirectly, that the State is then a party to the suit and the same cannot be brought in the Federal Courts. We have demonstrated that if the Trustees have to pay these taxes the State of Florida will be the one that will pay them and on whom the loss will fall. The record in this case shows that the Appellants advertised the fact that these bonds were guaranteed by the State of Florida (R. 198), and if the State has guaranteed these bonds, as the Appellants contend, then the State is responsible for the payment of the taxes on the land and the conclusion is inevitable that this is a suit against the State and contrary both to the State and Federal constitutions.

The answer of the Trustees, Paragraph 5, Subdivision (d) (R. 159) and Paragraph 16 (R. 165, 166) shows the financial status of the Trustees and their inability to pay taxes on certificated lands. Such status is the same today except that unpaid taxes are now greater. Since the Trustees do not have the money nor the assets to pay the unpaid taxes, if this Court should determine that they are liable for the taxes on the certificated lands, the burden would be upon the State to pay these taxes. Therefore, this is a suit against the State.

The Trustees, by virtue of law occupy dual positions. As originally created they are definitely agents for the State. However, under the Everglades Drainage District statutes they were made agents of the Drainage District. This situation is not unusual in the State of Florida for in numerous instances additional duties are imposed upon State Officials, such as the provision in the Everglades Drainage District statutes making the

State Treasurer, Treasurer of the District. The added duties to the Trustees; as well as the State Treasurer, made them agents of the District in addition to their duties as Agents of the State and the two agencies, are distinct and separate functions.

This Court has specifically recognized and declared the Trustees to be a State agency in the case of Union Trust Company of New York vs. The Southern Inland Navigation & Improvement Company, 130 U. S. 567, the 5th headnote of which reads as follows:

"The Trustees of the Internal Improvement Fund of the State of Florida are merely agents for the State, invested with the legal title of the lands for their more convenient administration; and the State remains the beneficial proprietor
• • • •"

Since the Trustees are State agents and since the State remains the beneficial proprietor of all lands vested in the said Trustees and since the Trustees have no funds except the proceeds derived from such lands, it follows that to require the Trustees to pay for Everglades Drainage District tax certificates when bid in for them, together with subsequent taxes thereon, would be the equivalent of requiring the State, as beneficial proprietor of such lands, to make such payment. Since this suit undertakes to compel such payment, it is to that extent a suit against the State and is prohibited by the above quoted provision of the United States Constitution.

The Appellants in this suit seek to do more than merely enjoin the Trustees from performing duties under the 1929, 1931 and 1937 Laws of Florida, alleged to be

void, but attempt to secure a decree against the Trustees determining that they are liable for several millions of dollars in taxes on lands which they do not own, to require them to pay these taxes, and to render an accounting if they do not have funds enough to pay them. If the Trustees were compelled to perform these affirmative acts, they would have to do so as State agents under statutes, the constitutionality of which has not been attacked. Clearly, insofar as any affirmative relief is asked this is a suit against the State.

Respectfully submitted,

George Couper Gibbs
GEORGE COUPER GIBBS,

Attorney General State of
Florida.

Marvin C. McIntosh
MARVIN C. MCINTOSH,

Tyrus A. Norwood
TYRUS A. NORWOOD,

Assist. Attorneys General.
Counsel for Appellees, Trustees of Internal Improvement Fund of the State of Florida.

SUPREME COURT OF THE UNITED STATES.

No. 554.—OCTOBER TERM, 1938.

C. Rorick, Joseph R. Grundy and
J. R. Easton, Appellants,
vs.
Board of Commissioners of Everglades
Drainage District, et al.

Appeal from District
Court of the United
States for the Northern
District of Florida.

[May 15, 1939.]

Opinion by Mr. Justice FRANKFURTER:

The case is here on appeal under Section 238 of the Judicial Code as amended (28 U. S. C. § 345) to review a decree of a district court of three judges convened under Section 266 of the Judicial Code as amended (28 U. S. C. § 380) denying an interlocutory injunction and dismissing the bill and supplemental bills. The bills challenged the validity of certain Florida statutes as impairments of the obligation of contract between the Board of Commissioners of Everglades Drainage District and the appellants, as holders of some of its outstanding bonds. The decree of the district court was based on its conception of the applicability of *Erie R. R. v. Tompkins*, 304 U. S. 64, but this and other questions are not now open for consideration if Section 266 does not cover a situation like the present. If there be a jurisdictional barrier here, it binds us though not invoked by the appellees.

The record is singularly obscure. This litigation, which has extended over eight years, is but one phase of a complicated controversy pursued in both state and federal courts.

The bill was filed on May 19, 1931. A supplemental bill was filed on May 4, 1931. The prayers of the bills were amended on November 1, 1931. A district court of three judges was convened on November 1, 1931. On September 17, 1932, orders were entered denying a motion to dismiss, and granting an interlocutory injunction conditioned on the filing of a bond for \$50,000. Answers were filed in October and November, 1932. The required bond was not given. On February 23, 1933 an order was entered that the interlocutory injunction should be vacated. The matter then lay dormant.

2 *Rorick vs. Bd. of Commrs. of Everglades Drainage District.*

until a second supplemental bill was filed on July 19, 1937. It was not until August 2, 1938, that the order sought here to be reviewed, denying the motion for an interlocutory injunction and dismissing the bill, was made.

The facts will be summarized only to the extent necessary to expose the jurisdictional problem. The Everglades Drainage District (hereafter called District), comprising a large acreage in the southern part of Florida, was established by Chapter 6456, Laws of Florida, Acts of 1913. The administration of the District was entrusted to a Board of Commissioners (hereafter called the Board), a body corporate. The lands were originally part of a grant made by Congress to Florida in 1850 whereby Florida undertook to apply the lands and proceeds derived from them to drainage and reclamation purposes. In fulfillment of this obligation Florida, in 1855 (Chapter 610, Laws of Florida, Acts of 1855), vested the lands in trustees of the Internal Improvement Fund (hereafter called Trustees) consisting of designated state officials. Subsequent legislation for the District made numerous changes affecting its financial administration and the relations between the District and the Trustees (Chapters 13,633, 14,717; 17,902, Laws of Florida, 1929, 1931 and 1937). The changes concerned rates of taxes, disposition of their proceeds, procedure in cases of tax delinquency, and authorization of bond issues.

Appellants sued as holders of bonds issued prior to these latter statutes claiming that they impaired obligations created by such bonds as defined by Section 23 of the Act of 1913 which specifically provided that the terms of that Act should constitute "an irrevocable contract" between bondholders and the District. In substance the bill and the supplemental bills alleged a reduction of the available taxes below those in effect at the time the bonds were issued, an adverse change in the debt service, and a diversion of revenues to purposes other than those required by the Act of 1913. The bills also complained of important changes effected by the later Acts regarding tax delinquencies on the lands in the District. It was alleged that under the earlier Act lands on which taxes were delinquent were to be sold at auction and, for want of bidders for the amount of taxes plus costs, were to be bid off to Trustees who were under a duty to pay for tax certificates as well as the drainage taxes in the future. Violation of contractual rights were alleged in that Trustees had ceased paying for the tax certificates as well as

the drainage taxes, and that Section 65 of the 1931 statute had declared that Trustees held the certificates in trust for the District and required them to transfer the certificates to the District. Further violations of the contract were attributed to powers given to the District, after 1913, whereby it was authorized to compromise taxes, to accept bonds for redemption of lands, and to cancel tax liens on lands which came into the ownership of the United States. Finally, a claim of impairment of contract was based on changes in the membership of the District after 1913.

The Board of Commissioners, the Trustees and various county tax officials were named as defendants in the suit. The bills sought to enjoin the defendants distributively, and with much particularity, from effectuating the various modifications made by the Acts of 1929, 1931 and 1937 concerning the rates of taxes, the disposition of their proceeds, the procedure in cases of tax delinquency, the authorization of bond issues, and the internal relations between the District and the Trustees as all these were claimed to be originally defined by the Act of 1913.

This appeal is properly here only if the present suit required the convening of a district court of three judges under Section 266. We do not think that this was such a suit, because the state statutes from which relief was sought do not constitute legislation "of general application," *Ex parte Collins*, 277 U. S. 565.

Ex parte Collins, *supra*, reinforced by *Ex parte Public National Bank*, 278 U. S. 101, authoritatively established the restricted class of cases to which the special procedure of Section 266 must be confined. "Despite the generality of the language" of that Section, it is now settled doctrine that only a suit involving "a statute of general application" and not one affecting a "particular municipality or district" can invoke Section 266. Plainly, the matter here in controversy is not one of statewide concern but affects exclusively a particular district in Florida. This Court in effect so held in denying a motion for leave to file a petition for writ of mandamus to convene a court, under Section 266, made by the Board of Commissioners in a suit by a bondholder claiming impairment of the obligation of contracts existing under the 1913 Act. *Ex parte Everglades Drainage District*, 293 U. S. 521. The present suit differs from the earlier case in that here the trustees of the Internal Improvement Fund were made defendants. But what is decisive under Section 266 is not the formal status of the officials sued but the sphere of their functions regarding the matter in issue. An official

4 *Rorick vs. Bd. of Commrs. of Everglades Drainage District.*

though localized by his geographic activities and the mode of his selection may, when he enforces a statute which "embodies a policy of statewide concern," be performing a state function within the meaning of Section 266. *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89. Conversely a state official charged with duties under a statute not of statewide concern is not a state functionary within the purposes for which Section 266 was designed. What was matter of local concern in *Ex parte Everglades Drainage District*, *supra*,—the administration of the affairs of the District—remains matter of local concern in the present suit. The nature of the controversy—legislation affecting a locality "as against a policy of statewide concern"—has remained unchanged even though the present bills made it pertinent to join the Trustees. This suit thus fails to satisfy an essential requirement of Section 266.

Since the time for appeal to the Circuit Court of Appeals has expired, and since the jurisdictional problem determined in this case had not been fully settled prior to this decision, we will not terminate the litigation by dismissing the appeal but, in accordance with the practice followed in *Oklahoma Gas & Electric Co. v. Oklahoma Packing Co.*, 292 U. S. 386, we will order the decree vacated and the cause remanded to the district court for further proceedings to be taken independently of Sec. 266 of the Judicial Code.

So ordered.

Mr. Justice DOUGLAS took no part in the consideration or disposition of this case.

Test:

Clerk, Supreme Court, U. S.

A true copy.



MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

442

3

8

9

9

